



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Uncollected Penalties

Department of Agriculture and Markets



Report 2012-S-69

July 2013

Executive Summary

Purpose

To determine if the Department of Agriculture and Markets (Department) effectively pursues and collects outstanding penalties. The audit covers the period April 1, 2007 through February 1, 2013.

Background

The Department's mission is to foster a competitive food and agriculture industry that benefits producers and consumers, while promoting public health and safety. The Department conducts inspections of various operations to ensure compliance with the Agriculture and Markets Law. Individuals and entities who violate the law first receive warnings seeking compliance. When problems are not corrected, monetary penalties can be assessed. Between April 1, 2007 and September 17, 2012, the Department assessed over 31,000 penalties totaling more than \$18.2 million. Of this amount, \$10.4 million (57 percent) was collected, \$2.2 million was waived and \$3.9 million was written off as uncollectible. The remaining of \$1.7 million was outstanding.

Key Findings

- Outstanding accounts routinely have no collection activity for two years or more and are often eventually deemed uncollectible. Between April 2007 and October 2012, more than 6,000 penalized establishments went out of business resulting in the withdrawal and write off over \$3.5 million of accounts receivable.
- Critical but incompatible duties associated with collection (including billing, recordkeeping and receipt of payments) are all assigned to one employee. An absence of management oversight has significantly increased the risk that errors, omissions and even irregularities can occur and not be detected.
- The current system used to track outstanding penalties is incomplete and often inaccurate. As a result, the Department is unable to utilize certain proven collection methods, including the State-Wide Offset Program.
- A lack of communication and information flow between the Penalty Unit and the divisions performing inspections negatively impacts consistency and effectiveness.

Key Recommendations

- Revise collection processes to eliminate extended periods of inactivity and provide for more periodic and progressive attempts to secure payment.
- 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.
- Develop performance measurement tools, such as periodic reports and analytics, to enhance management oversight and monitoring of penalty and collection activities.
- Improve communications and information sharing between and among operating divisions, especially as it relates to penalty history.

Other Related Audits/Reports of Interest

[Office of the Attorney General: Accounts Receivable Collections \(2011-S-25\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

July 31, 2013

Darrel J. Aubertine
Commissioner
Department of Agriculture and Markets
10 B Airline Drive
Albany, NY 12235

Dear Commissioner Aubertine:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Agriculture and Markets entitled *Uncollected Penalties*. This audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

In order to fulfill its mission of fostering a competitive food and agriculture industry that benefits producers and consumers alike, the Department has six divisions that perform inspections to ensure establishments under its jurisdiction remain in compliance with the Agriculture and Markets Law. Inspections occur across various areas such as the plant and animal industries; milk and dairy services; weights and measures; food safety; and agriculture development. The Department performs these inspections to further its goal of protecting the health and safety of the public.

When an establishment is found to have violated the law, the division performing the inspection sends a warning letter seeking compliance. If the infraction is not corrected, the division refers the entity to the Department's Penalty and Litigation Unit (Penalty Unit), a unit of its Counsel's Office which is responsible for assessing and collecting all monetary penalties. For most State agencies, when normal collection efforts are unsuccessful, the Attorney General has the sole authority to commence and prosecute legal actions to recover civil penalty assessments through judgment by a court. However, the Attorney General's Office has granted the Department authority to pursue recovery of penalties arising from violations of the Agriculture and Markets Law. In general, such actions must be pursued within three years of the date the penalty is assessed. A successful court judgment then allows the agency up to 20 years to collect the debt.

Between April 1, 2007 and September 17, 2012, the Department assessed over 31,000 penalties totaling more than \$18.2 million. Of this amount, \$10.4 million (57 percent) was collected and \$1.7 million was outstanding. Of the remaining \$6.1 million, the Department waived or reduced penalties totaling \$2.2 million, in many cases because the violator came into compliance. The remaining \$3.9 million was written off as uncollectible; often because the establishment went out of business or the three-year window to pursue collection had expired.

Audit Findings and Recommendations

The system of internal controls surrounding the Department's collection process is not adequate to ensure that penalties are appropriately assessed and collected. Outstanding accounts routinely experience no collection activity for extended periods. As a result, significant amounts are eventually deemed uncollectible, because businesses have closed or the legal time for collection has expired. Further, a combination of the lack of separation of critical duties, a lack of monitoring and oversight by management and an inadequate system of communications and information flow between the Penalty Unit and the divisions performing inspections has significantly increased the risk that errors, omissions and even irregularities can occur and not be detected. Improvements in this area would not only result in significantly more revenue collection for the Department, but also increase compliance by those subject to its oversight.

Infrequent Collection Activities Contribute to Uncollected Penalties

Successful collection of overdue accounts requires repeated and progressive attempts to contact the debtor and secure payment. These efforts often begin with periodic bills and can advance through collection letters and telephone contacts, culminating in efforts to secure a legally enforceable judgment and the possible seizure of assets.

Once a division determines that a penalty needs to be assessed, the Penalty Unit sends out a notification letter informing the violator about the penalty and requesting payment. An appeal application is also attached to the letter. If payment is not made within 25 days, a second letter is routinely sent. However, if the amount remains unpaid after this second collection attempt, unless the violator incurs a new penalty, no other collection efforts are made until Counsel's Office initiates the legal process to secure a court judgment.

Counsel's Office does not begin this judgment process until the penalty is about two and a half years old; six months before the three-year statutory period for collection expires. Officials informed us that they wait this long in case the individuals or companies incur more penalties, which can be added together under the same judgment. Nevertheless, accounts often remain dormant for two years or more with no collection activity. Department records show many companies go out of business during this time and as a result, outstanding penalties go uncollected. In fact, Department data shows over 6,000 penalized establishments went out of business between April 2007 and October 2012; resulting in the withdrawal and write off over \$3.5 million of accounts receivable.

The Department has also decided that due to the cost of litigation, it is not economically feasible to pursue individual cases where penalties total less than \$500. Therefore, if a company owes less than \$500, the penalty will simply sit idle until the three-year collection window expires, at which time the Department will write it off as uncollectable. During the five and a half year period we audited, the Department issued more than 12,800 penalties of less than \$500, totaling over \$3.6 million for the period. Under current procedures, if the companies did not pay these penalties right away but also did not incur more penalties, there was little chance this revenue

would be collected.

Lack of Separation of Duties and Enhanced Monitoring Efforts

A core characteristic of a strong internal control system is to have key tasks and responsibilities such as billing and collection, recordkeeping, cash receipt and deposit, and reconciliation divided among different employees or units of an organization. This provides a system of checks and balances that reduces the risk that errors, omissions or even abuses may occur and remain undetected. In cases where tasks cannot be effectively separated, management needs to substitute increased supervision as an alternative control activity.

Although attorneys in the Counsel's Office work to bring legal actions that enforce delinquent penalties, responsibility for the day-to-day activities of the Penalty Unit is largely vested in just one person. This individual controls nearly all aspects of penalty transaction processing, which range from maintaining a database of penalty assessments and sending out penalty notices and other collection letters to violators; to opening the mail, recording payments, updating and reconciling the penalty accounts receivable database, and forwarding payment checks to the Finance Unit for deposit. Even though these inherently conflicting tasks are assigned to just one individual, increased management oversight is not apparent.

Current policies and procedures are also not comprehensive and do not sufficiently address other areas of program monitoring. Without proper monitoring, management cannot be assured that the penalty process is functioning as intended, thereby achieving its ultimate goal of improving compliance and protecting the health and safety of the public. Although the Penalty Unit does produce monthly reports for management review, officials were not able to use existing data to identify the collection rate for penalties that had judgments secured. Therefore, they are unable to determine the success of their collection process and whether securing a judgment is a cost beneficial endeavor.

The lack of monitoring and oversight makes it difficult for management to ensure the divisions and the Penalty Unit are following through by referring penalties when appropriate and collecting outstanding debts. Our review of penalty records showed one division did not refer any penalties at all during 2011, despite conducting over 2,200 inspections; about the same number as in previous years. The prior year, this division had referred over \$12,000 in penalty assessments as a result of entities failing inspections. Some staff told us the lack of penalty collection efforts had lowered morale and provided less incentive to impose new penalties. Other staff commented about more recent improvements as a result of an increased focus on penalties by the Counsel's Office. These positive improvements are an important action in maintaining the quality of future inspection efforts.

Information and Communication Issues

The flow of information and communications within an organization is another critical part of the internal control system. When information is isolated or becomes compartmentalized,

organizations are less efficient and effective in achieving their goals. We found several opportunities for the Department to improve its internal communication systems to ensure the penalty collection process is consistent and effective across all divisions.

The Department has six divisions that perform inspections of various entities to ensure compliance with the Agriculture and Markets Law. When an inspection identifies an entity with a serious violation, a warning letter is issued followed by a penalty assessment if the entity fails to come into compliance. In the event a penalty assessment is required, the division refers the entity to the Penalty Unit for processing and collection.

We interviewed staff from each of the inspecting divisions and determined there is little communication between divisions regarding their inspection and penalty processes. Each division operates independently and has its own policies, procedures and internal tracking system. Even though some entities are inspected by more than one division, there is no formal communication tool to afford information sharing between those divisions. As result, the complete inspection, compliance and penalty history of an entity is not available for review by staff involved in the process. Rather, each division only has access to the historical information from its own activities. This may not give officials a complete perspective when considering whether to issue warning letters and penalty assessments, which should be influenced by past performance.

There are also other opportunities to improve the level of understanding among the divisions and the Penalty Unit concerning their different policies and procedures. For instance, in our discussions Penalty Unit staff singled out one division they believed was very good at pursuing entities with outstanding penalties that close and subsequently re-open under a different name. However, when we met with that division, we were told that this is not part of their mission and they do not have the necessary data to conduct this type of follow up.

We also identified communication breakdowns between the divisions and the Department's Licensing and Information Technology units regarding the ability to withhold licensure as means of enforcing penalty collections and ensuring compliance issues have been corrected. We determined that license renewals and issuances are sometimes withheld as a result of failed inspections, but not because of outstanding penalties. One division Director told us the Department simply does not use its licensing authority as part of the penalty collection process. However, the Department's Information Technology Unit told us this function is available in the current system. Since the start of our audit, one division has begun withholding licenses as a result of unpaid penalties and has reported initial success.

Records Deficiencies Impact Reporting and Hinder Statewide Collection Efforts

Data reliability is another critical factor that can influence debt collection. We found the Department's ability to maximize its collection efforts is in part hampered by shortcomings in the data it maintains on outstanding penalties. Our audit identified several indications that the database used to track penalty history and collection efforts is not complete and current, in large

part because it is missing critical data about the actual amount of the debt outstanding. Our review of the database showed it only includes the penalty amount owed by the entity, not any court costs and interest that may have been awarded if a judgment was secured. This information is only kept in hard copy and, although the costs are due, staff only enters the additional costs in the database if a payment is received.

We also noted that the quarterly accounts receivable reports which the Department prepares for the Division of Budget are being compiled manually and do not capture all penalties due. Staff told us they are more comfortable with the manual method, even though it is more time consuming, because there are often discrepancies between the database and the hard copy records and they want to ensure accuracy. The discrepancies exist because interest and court fees are not recorded in the database. The Department's policy is to only report penalties for which a judgment has been secured. As a result this significantly understates the true scope of outstanding penalties. As of June 30, 2012, there were 4,200 penalties amounting to over \$3.6 million still outstanding that were recorded in the database but not reported by the Department.

As another effect of these database inadequacies, the Department is not currently able to take advantage of opportunities to increase its collections through the State-Wide Offset Program (SWOP) administered by the Department of Taxation and Finance. The SWOP program flags certain payments slated for people and companies with unpaid liabilities and uses those funds to pay the debt. In addition, given its current data problems, the Department would likely not be able to fully participate in the planned statewide e-licensing program slated for implementation in 2014. This system has an enforcement component that would prevent an entity with outstanding penalties from renewing a license from any State agency until their assessment is paid. The Department's Information Technology staff told us they plan to replace the current database in time to take full advantage of the new statewide e-licensing system.

Finally, staff in other divisions do not have access to the penalty database and therefore need to maintain their own records if they want to consider penalty history in making future decisions about an entity's compliance efforts. Five of the six divisions that perform inspections maintain their own tracking system to monitor the status of referred penalties. However, the one division responsible for more than 90 percent of the penalties assessed during our audit period (29,000 penalties totaling almost \$17 million), is the only one that does not have a tracking system. This division only maintains hard copy documentation of penalties. As a result, this division is unable to aggregate or analyze its penalty data, either by type or industry, to identify patterns or necessary improvements to enhance its effort to ensure compliance and improve public safety.

Policies and Procedures Are Outdated and Do Not Promote Succession Planning

Many of the conditions we observed have resulted at least in some part because the Department has not formally revised its policies and procedures for penalty collections in almost 20 years. Instead, as the work environment and situations have changed, the individuals responsible for these tasks have developed their own methods to fulfill their responsibilities. These procedures

have only been maintained informally. When we asked for documentation to help us obtain an understanding of systems and controls, we found that routine daily procedures and tasks are kept in a worn note pad with several memos and notes inserted.

As officials work to revise their collection procedures, it is important that these efforts be documented and approved. Written procedures not only help to ensure a common understanding and consistency on a day-to-day basis, but also help the agency transition duties among individuals in the event of staffing changes or unexpected events that could otherwise disrupt ongoing operations.

Recommendations

1. Revise collection processes to eliminate extended periods of inactivity and provide for more periodic and progressive attempts to secure payment.
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.
3. Develop performance measurement tools, such as periodic reports and analytics, to enhance management oversight and monitoring of penalty and collection activities.
4. Improve communications and information sharing between and among operating divisions, especially as it relates to penalty history.
5. Take steps to withhold licensing or re-licensing of persons or entities with unpaid penalty obligations.
6. Improve the accuracy and completeness of information in the penalty database to enable reliable reporting and thereby eliminate other redundant systems and manual processes.
7. Utilize the State-Wide Offset Program, as well as the planned statewide e-licensing system, as a means to collect outstanding debts.
8. Update and formalize written procedures governing the assessment and collection of penalties.

Audit Scope and Methodology

The objective of our audit was to determine if the Department effectively pursues and collects outstanding penalties. The audit covers the period of April 1, 2007 through February 1, 2013.

To accomplish our audit objectives, we reviewed relevant industry standards, State laws and agency policies and procedures. We also interviewed division Directors, Penalty and Litigation Unit personnel, Information Technology personnel and Finance personnel within the Department

to gain an understanding of their policies and procedures for penalty issuance and referral. Using data analytic software, we analyzed the Penalty and Litigation Database to determine the amount of penalties issued, withdrawn and reduced.

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 whom 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 functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was done according 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. Officials agreed with our recommendations and reported having already taken steps to implement them. A complete copy of their response is included at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Agriculture and Markets shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

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To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



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Andrew M. Cuomo
Governor

Darrel J. Aubertine
Commissioner

June 19, 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 Draft Audit Report
Uncollected Penalties (2012-S-69) (the "Draft Audit Report")**

Dear Mr. Buyce:

I have reviewed the Draft Audit Report referenced above. As you know, prior to the commencement of the audit, Counsel's Office, under new leadership, began its review of the policies and procedures of the Penalty Unit to evaluate its effectiveness and streamline its processes. This ongoing review, coupled with the findings and suggestions of the Draft Audit Report, has led to significant changes to our penalty collection procedure, and we are continuing to improve our efforts.

As requested, here is our response to your specific recommendations:

Recommendation 1.

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

On April 1, 2013, the Department changed its procedure for commencing litigation to recover unpaid penalties. Counsel's Office will no longer defer the commencement of actions for unpaid penalties until the approach of the Statute of

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Limitations bar.¹ Starting with penalties that have been assessed in March 2013, absent payment or settlement, the Penalty Unit will commence suit within 120 days of the penalty's issuance.

Since a majority of suits brought to enforce penalties result in either a resolution upon the receipt of a summons and complaint or a default, Counsel's office has adopted the practice of using a Summons with Notice or an Endorsed Complaint, as opposed to its past practice of commencing a suit with a summons and verified complaint. The Department anticipates that this change will save Counsel's Office time in preparing complaints for cases that will be resolved shortly after the service of process. This anticipated reduction of work will assist the Penalty Unit in reducing the backlog of cases awaiting suit.

As the Penalty Unit works to decrease that backlog, and consistent with the Audit Reports observations concerning the additional benefits from increased collection activity, the Penalty Unit is sending letters advising establishments of the Department's intent to promptly commence suit unless outstanding penalties are addressed. These final reminder letters have shown some promise in obtaining payments or settlements, avoiding the need for suit. Where no results are achieved, actions will be commenced within 60 days of the intent to sue correspondence.

Coupled with the more timely commencement of suit, the Department is exploring ways to collect judgments cost-effectively. The Penalty Unit is working with the Divisions to obtain information concerning the penalized establishments that might assist in collecting outstanding penalties. In the past, the Penalty Unit has not tracked licensee's banking relationships, and the Department is currently working to track this information and determine whether restraining notices served upon financial institutions might provide a useful, cost-effective tool in collecting penalties reduced to judgments.

That being said, between 2007 and 2012, this small unit² has collected or settled approximately 70% of the assessed penalties. We have collected 57% of the assessed penalties, and either waived or settled an additional 12% of the penalty assessments by our Division of Food Safety Inspection, as a policy decision to encourage compliance. Accordingly, the changes the Department is and will continue to make will be directed at recovering the remaining 30%.

¹ It is anticipated that the increased frequency of contact and, if necessary, suit arising out of the decision to proceed on individual penalties will result in increased collection.

The Penalty Unit will continue to defer commencing action until an establishment's outstanding penalties exceed \$500. Contrary to the suggestion in the Draft Audit Report (p 6, para. 5), this policy has not been the cause of the loss of a significant amount of potential collections. Currently, and with the increase in penalty amounts, the number of penalties below \$500 is increasingly rare. Moreover, over the course of two to three years, it is unusual for establishments to receive only a single penalty of less than \$500. Accordingly, in most cases, the prior aggregation policy would have eventually triggered suit -- not the loss of a large amount of claims due to the creation of a limitations defense.

² During this period, one paralegal and one or two secretaries (depending on which year) handled over 20,000 penalties.

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The Department anticipates that even with the compression in time between penalty assessment and suit and a more robust enforcement effort, the collection or settlement will be more difficult. The remaining establishments with outstanding obligations tend to be more economically troubled small businesses, often without the resources even to address the relatively small amounts of the outstanding obligations. In this regard, many of the settlements the Department reaches with penalized establishments require payment plans for penalties totaling less than \$1,000.

Further, Counsel's Office, working with the Division of Food Safety Inspection (which generates approximately 90 percent of the assessed penalties) is formalizing and documenting the Division's policy to reduce or waive penalties for qualifying businesses that correct their problems and return to compliance. From now on, participation in this penalty reduction program will only be available to establishments within 45 days of the issuance of the penalty, incentivizing establishments to address and resolve the assessed penalties.

This program may increase the number of penalties that will be waived or reduced, but obtain greater compliance. Previously, however, the Department has offered penalty reductions at any stage of the process, providing little incentive to promptly confront the issues. As only smaller reductions will be offered after the expiration of 45-days, higher recoveries should be realized on the remaining outstanding 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 the penalty and settlement payments from the Penalty Unit to the Office of Fiscal Management.

We have filled two additional positions in the unit. As the unit is reorganized, the tasks among the employees will be segregated and documented. Further, Counsel has assigned managerial responsibility of the Penalty Unit to the Deputy Counsel, who is now working closely with the unit to develop practices and procedures that will increase reporting and tracking of the Penalty Unit's efforts and collections, revamp its filing system and better integrate the activities of the Penalty Unit with the Divisions they serve, improving both communication and Division oversight.

Counsel's Office is also working closely with Information Technology to capture information generated by the Divisions when assessing penalties and the Penalty Unit when processing and pursuing the assessed penalties, which should better guard against omissions, errors and irregularities.

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Recommendation 3.

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

Current efforts are underway to improve the tracking of penalties, litigation status and collections. The necessary information to do this is currently available in the Department's files, but difficult to access due to the hard copy filing and the different computer systems in use in the Penalty Unit and the Divisions.

Counsel's Office is working with Information Technology to develop the capability to generate 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 to obtain payment or settlement and the status/stage of each uncollected penalty. It is also working to permit the sharing of such information with the Divisions.

With these and other near term improvements, the Penalty Unit will be able to pull the relevant data and generate reports for the Penalty Unit, the Divisions and management to better evaluate the effectiveness of the collection and enforcement efforts.

These efforts are being taken in conjunction with the Department's planned deployment of Accela management programs (the "e-licensing" effort) and services so as to be able to collect all data necessary to the greater power and flexibility of the new system.

Recommendation 4.

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

The absence of information sharing among Divisions concerning penalties has not been an impediment to the accomplishment of their respective missions.

To the extent there is any overlap among the Divisions with respect to establishments that they regulate, the Division Directors reported their ability to cooperate with their counterparts and access the information they need.

Nevertheless, and where appropriate, the Department continues to look for ways to improve communications and information sharing among the Divisions. For example, to the extent that the Divisions collect financial information that might assist enforcement efforts, the Penalty Unit and Information Technology are seeking to identify and capture that information.

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Moreover, Counsel's Office has identified the modernization of the Penalty Unit as a priority and its Deputy Counsel is working with each of the Divisions to improve communications and to clarify the Penalty Unit's and each Division's respective role and responsibilities in connection with penalty assessment and collection.

Recommendation 5.

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

To the extent allowed by statute, the Department has taken steps to withhold the re-licensing of entities with unpaid penalty obligations. That authority, however, does not extend to all of the Department's Divisions. The Department submitted a Departmental bill S.4302 that would, among other things, withhold licensing or relicensing in the Division of Food Safety Inspection where there were unpaid penalty obligations. This proposal was amended, removing that term, at the request of the New York State Assembly. We will continue to urge the Assembly to pass this type of measure to aid in the Department's collection activities.

Recommendation 6.

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

Management has been working with the Penalty Unit in developing and adopting practices of using the systems and technologies currently available to capture all relevant information needed to operate the unit and to eliminate the manual processes noted in the report. This effort is being coordinated with Information Technology, both to obtain near-term improvements and a seamless transition to the Department's use of Accela management software and products, which is planned to be deployed sometime later next year.

The filing system of the Penalty Unit is being reorganized and simplified. Counsel's Office is working with Information Technology in connection with a possible transition to electronic filing.

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 has previously looked at the possibility of utilizing the State-Wide Offset Program. It was discovered that the Penalty Unit maintained its data in such a way that would require a greater commitment of resources to participate -- resources that it did not have. Further, it was the experience of the Penalty Unit that a substantial number of the establishments were small, fiscally weak businesses, and that

Mr. John Buyce
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the commitment of resources to participate in the SWOP program would not be particularly productive.

In revamping the Penalty Unit's procedures, Counsel's Office is working with IT to do what is necessary to assemble the data required for the SWOP program, which should permit the Penalty Unit to use the program on a going forward basis for new assessments. Counsel's Office will also work to obtain the information for those establishments where the SWOP participation would be most likely to provide results.

Recommendation 8.

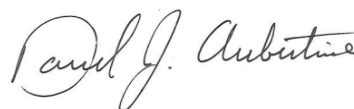
Update and formalize written procedures governing the assessment and collection of penalties.

Counsel's Office, together the Department's new Internal Control Officer is reviewing, updating and documenting the Penalty Units processes and procedures.

In conclusion, we wish to thank OSC for its audit and recommendations. We believe the implementation of the recommendations you made in this report in conjunction with the actions already taken by the Department and changes we are in the process of implementing, will permit us to more effectively and efficiently pursue the enforcement and collection of assessed penalties.

Please contact Susan Rosenthal, Counsel, or Scott Wyner, Deputy Counsel, should you have any questions with respect to the Department's responses or should you need additional information or documentation.

Sincerely,



Darrel J. Aubertine
Commissioner