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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 16, 2021

Richard Ball
Commissioner
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Re: Oversight of Industrial Hemp
Report 2021-F-9

Dear Commissioner Ball:

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 taken by officials of the Department of Agriculture and Markets (Department) to implement the recommendations contained in our audit report, *Oversight of Industrial Hemp* (Report [2018-S-32](#)), issued December 9, 2019.

Background, Scope, and Objective

Industrial hemp is an expanding commodity in the United States, as both the stalk and seed can be used to produce thousands of different products, including clothing, building materials, fuel, paper, and biodegradable plastics. Federal and State law define industrial hemp as any part of the *Cannabis sativa L.* plant with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3%. On February 7, 2014, the Agricultural Act of 2014 was signed into federal law and, in part, authorized institutions of higher education and state departments of agriculture to grow or cultivate industrial hemp for research purposes. In response, Article 29 of New York's Agriculture and Markets Law was enacted, launching the Industrial Hemp Agricultural Research Pilot Program (Program). The Department, through its Division of Plant Industry, administers the Program.

The federal Agriculture Improvement Act of 2018 made numerous changes to the industry, including removing industrial hemp from the federal Controlled Substances Act definition of marijuana and allowing states to have primary regulatory authority over hemp production through plans approved by the U.S. Department of Agriculture. The plans must include procedures for testing the levels of THC in hemp and the disposal or remediation of plants if the testing shows levels above the acceptable THC level. Implementation of the hemp provisions in the Agriculture Improvement Act of 2018 have been delayed several times. Therefore, the Department continues to operate the Program under the Agricultural Act of 2014 and will do so until the authority expires on December 31, 2021. At that time, the Department will need to either have an approved federal plan to continue a program under the new provisions or allow the U.S. Department of Agriculture to assume responsibility for the Program. Current registered grower participants (growers) will need to reapply under the new provisions. As of

May 2021, the Program included 726 growers, an increase from the 419 growers participating in July 2019, shortly after our initial audit period ended.

The objective of our initial audit report, covering the period April 1, 2016 through May 31, 2019, was to determine whether the Department is adequately administering the Program in accordance with federal and State requirements. The audit found that, while the Program had rapidly expanded opportunities for industrial hemp production in the State, the Department did not always follow established practices when reviewing applications, conducting inspections, and sampling plants. The Department inspected only 57% of growers in the Program and tested plant THC levels for only 58% of the growers during 2018. According to the Department, staffing shortages and competing priorities affected its ability to inspect and sample. Incomplete records and unreliable data systems further hindered the Department's ability to effectively monitor Program requirements. In addition, the Department generally accepted most grower applications, even if they were incomplete or contained risk factors that officials stated they screened for during their review. Furthermore, the Department had only a draft policy for handling the disposal of non-compliant plants, which it was not following. Because of these and other weaknesses, we concluded that the Department needed to improve its monitoring of Program compliance by taking steps to improve the quality of Program data and performing comprehensive analytics of the data, which would enable the Department to better allocate staff resources. In addition, we concluded the Department would need to develop clear and consistent procedures for several aspects of the Program.

The objective of our follow-up was to assess the extent of implementation, as of June 17, 2021, of the three recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Department officials made progress in addressing the problems we identified in the initial audit report. Of the initial report's three audit recommendations, one has been fully implemented and two have been partially implemented.

Follow-Up Observations

Recommendation 1

Take steps to improve the usability, accuracy, and completeness of Program data, including implementing procedures for input, quality assurance, and utilization of information.

Status – Implemented

Agency Action – The Department has developed and implemented a database that maintains grower information including application information, harvest report status, and sampling information. This database is operational, and Department officials stated it has improved their ability to use Program data to administer and monitor the Program. Along with the database, the Department has also implemented new reporting requirements. All reports are now included in the Department's grower reporting package intended to facilitate growers' compliance with reporting requirements. The information from these reports is entered into the database and allows the Department to identify discrepancies between planting reports, harvest reports, and registered locations.

To improve the accuracy and completeness of Program data, the Department has developed procedures for processing participant applications, including data entry, as

well as updating and backing up the database. The database is also tested as part of the Department's internal control review processes. As of June 2021, the Department hired a new staff member who will be primarily responsible for updating information in the database.

Recommendation 2

Implement procedures to incorporate periodic data analysis to:

- *Identify patterns, outliers, and/or areas of risk for industrial hemp testing;*
- *Assist in allocating staff resources as effectively as possible; and*
- *Monitor compliance with State, federal, and Department requirements and practices.*

Status – Partially Implemented

Agency Action – While the Department has not developed written procedures related to data analysis, the recently implemented database can be used to analyze Program data and the Department has created pre-defined reports to identify discrepancies among planting, harvest, and annual reports, as well as registered locations. For example, beginning in 2020, the Department began to use the query “Missing Post Harvest Reports” to identify growers that submitted planting reports, but not the required post-harvest reports. Department officials noted they continued to face staffing shortages and competing priorities, which has created a backlog of information that needs to be entered into the database. However, the Department has begun re-allocating staff resources and recently hired a new employee who will be responsible for updating the data. Department officials said that the new database will allow them to more efficiently and effectively monitor compliance with State, federal, and Department requirements and practices going forward.

Recommendation 3

Develop, implement, and follow clear and consistent procedures for processing applications, conducting inspections, sampling, and disposing of non-compliant plants, including adherence to the State and federal limits of THC.

Status – Partially Implemented

Agency Action – The Department has developed procedures for both administrative and programmatic aspects of the Program, including procedures describing the process for approving an application, sending out research partner agreements, updating the status of applications, entering inspection reports, and submitting growers' reports. Newly developed procedures also cover steps to be used in the field when conducting inspections and sampling industrial hemp to ensure that growers are adhering to State and federal requirements. However, the Department has not developed clear and consistent procedures regarding the disposal of non-compliant plants.

Major contributors to this report were Andrea LaBarge, Stephon Pereyra, Loriann Johnson, and Rachel Quinlan.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Heather Pratt, CFE
Audit Manager

cc: Cheryl Belber, Department of Agriculture and Markets