

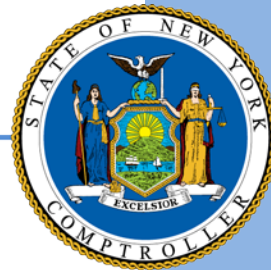
# **New York State's Environmental Protection Fund: A Financial History**

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**OFFICE OF THE NEW YORK STATE COMPTROLLER**

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**Thomas P. DiNapoli, State Comptroller**



March 2018

# Message from the Comptroller

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March 2018

This year marks the 25<sup>th</sup> anniversary of the legislation that created New York State's Environmental Protection Fund (EPF) – a development well worth noting. The Fund is one of the State's most important vehicles for making capital investments to preserve open space, protect water quality, and improve parks and waterfronts all across New York.



Historic high levels of EPF appropriations and spending in recent years underscore the Fund's vital role and reflect a renewed commitment to achieving its goals. In State Fiscal Year (SFY) 2016-17, EPF appropriations reached an all-time high of \$302 million. This year's proposed Capital Plan projects \$300 million appropriations in each of the next five fiscal years. Actual spending levels are at historic highs, as well. Given the ever-present competing demands for scarce budget resources, these figures reflect the broad-based recognition that the EPF has played a vital role in helping the State meet its environmental conservation objectives and remains an important priority for the years immediately ahead.

EPF appropriations have totaled \$3.4 billion from its creation in 1993 through the State's last complete fiscal year, 2016-17. Of this, some \$2.6 billion had been spent on environmental protection, parks and other related programs as of March 31, 2017. Over the life of the Fund, more than \$953 million in EPF resources has been diverted to the General Fund for budget relief. While some of this was replaced with borrowed funds, over half, or \$507.2 million, has not been replenished.

Looking forward, the EPF's sustainability as a dedicated funding stream for environmental programs and projects will remain an important issue. The Fund's historically high level of spending last year would not have been possible without General Fund support. And based on projected future EPF receipts from dedicated revenues, additional resources beyond the General Fund transfers currently anticipated will be required to meet projected EPF disbursements in coming years. Such reliance on resources other than dedicated revenues comes as budget gaps are projected to increase in coming years, and statutory debt capacity to decrease, providing a note of caution regarding future funding levels.

The programs supported by the EPF represent an investment to preserve and promote the environment for all New Yorkers, today and in the future. We need to make sure there is a reliable funding stream to continue this investment for the next quarter century and beyond.

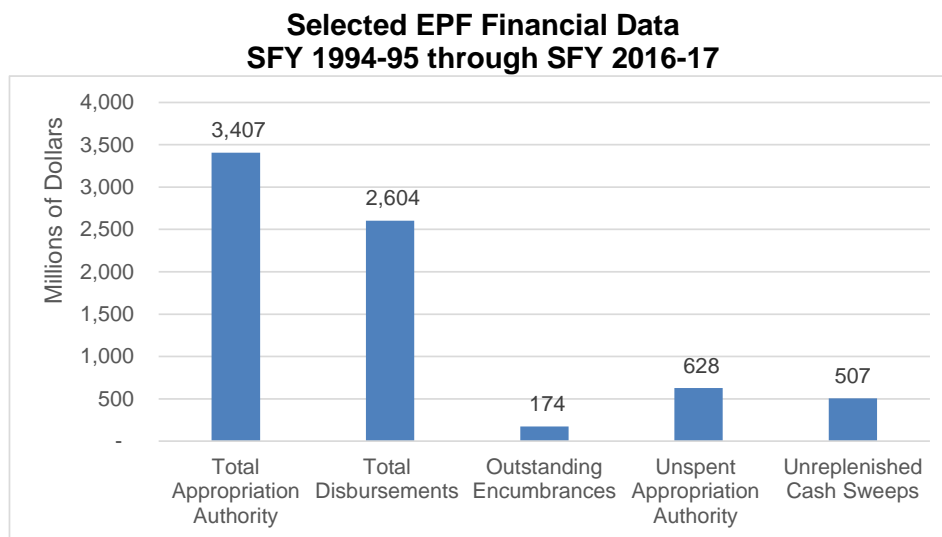
Thomas P. DiNapoli  
State Comptroller

# I. Introduction

In the late 1980's and early 1990's, a combination of events – including the proposed sale of large tracts of Adirondack forestland, the depletion of spending authority under previously authorized environmental bond acts, and the failure at the polls of the Environmental Quality Bond Act of 1992 – served to highlight the need for a permanent, dedicated stream of resources to address the State's conservation funding needs. In response, legislation was enacted in 1993 to establish the New York State Environmental Protection Fund (EPF, or Fund).<sup>1</sup> The EPF is a dedicated fund whose resources are required to be kept separate from other State moneys. Although EPF appropriations appear in the Department of Environmental Conservation (DEC) budget, DEC as well as other State agencies and authorities, including the Office of Parks, Recreation and Historic Preservation, the Empire State Development Corporation, the Department of Agriculture and Markets and the Department of State use resources of the Fund to administer a number of programs.

This report provides details on EPF revenues and spending over the life of the Fund, and provides an outlook on its sustainability as a dedicated source of funding for environmental programs in coming years.

**Figure 1**



*Note: Unreplenished Cash Sweeps represent transfers from the EPF to the General Fund that were authorized in various enacted State Budgets and not replaced with bond proceeds.*

*Source: Office of the State Comptroller*

The EPF was intended to provide a permanent, dedicated source of funds for addressing the State's conservation funding needs. In addition, by providing funds for programs and projects on a pay-as-you-go basis, the State could avoid the expenses for debt service that come with borrowing.<sup>2</sup> Over nearly a quarter-century, the EPF has become one of the most significant sources of funding for State and municipal programs to preserve open space, improve parks and recreation programs, and protect water quality. Through the end of State

<sup>1</sup> Chapters 610 and 611 of the Laws of 1993.

<sup>2</sup> *Effective Management of the Environmental Protection Fund*. Office of the New York State Comptroller. June 2010. See: [https://www.osc.state.ny.us/reports/environmental/epf\\_capstone.pdf](https://www.osc.state.ny.us/reports/environmental/epf_capstone.pdf).

Fiscal Year (SFY) 2016-17, the Fund has received appropriations of \$3.4 billion, over \$2.6 billion of which has been spent for a variety of environmental projects and programs, as shown in Figure 1. In SFY 2016-17, the \$302 million EPF appropriation accounted for approximately 31.5 percent of all new capital funds appropriated to the Department of Environmental Conservation (DEC).

The EPF currently comprises five accounts: solid waste; parks, recreation and historic preservation; open space; climate change mitigation and adaptation; and EPF transfer. The climate change account was added in SFY 2016-17, the first addition since the Fund's inception. All EPF revenues are first deposited in the EPF transfer account before being moved to other accounts for disbursement purposes.

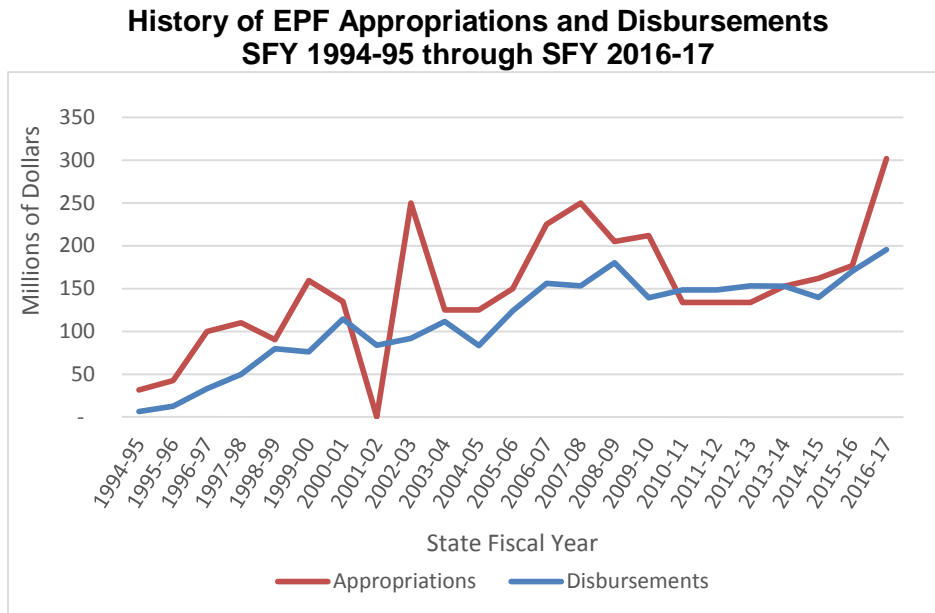
In a 2013 report on the 20th Anniversary of the EPF, DEC reported that the projects supported by this spending have included more than 1,300 municipal parks improvements, waterfront revitalization in 330 communities, and protection of 650,000 acres of open space along with 72,000 acres of farmland. In addition, the Fund has: supported farm, municipal and nonprofit initiatives to reduce water pollution and otherwise improve water bodies; assisted municipal recycling and waste reduction programs; funded efforts to control invasive species; financed the stewardship of parks and other State lands; and provided aid to zoos, aquaria and botanical gardens.

## II. EPF Appropriations and Disbursements

Annual EPF appropriations have grown significantly since the Fund was created, as shown in Figure 2. The SFY 1994-95 Enacted State Budget, the first to include EPF funding, provided a \$31.5 million EPF appropriation. The SFY 2016-17 appropriation of \$302 million, including a \$120 million transfer from monetary settlement resources received by the State, was the largest in the Fund's history.

The \$302 million appropriation represented a near doubling from EPF appropriations over the preceding five years, which had averaged \$152 million annually. Over the life of the EPF through SFY 2016-17, annual appropriations have averaged \$148.1 million. The SFY 2017-18 Enacted Budget included an EPF appropriation of \$300 million, marginally smaller than the previous year's historic high. The SFY 2018-19 Executive Budget also includes an appropriation of \$300 million for the EPF.

Figure 2



Source: Office of the State Comptroller

Historically, EPF disbursements have lagged appropriations in most years. The EPF is a Capital Projects Fund and such lags may be due, in part, to the nature of spending for capital projects, which can occur over several years. A report issued in 2010 by the Office of the State Comptroller identified excessive delays in the process for disbursing funds and weaknesses in project monitoring as reasons for burgeoning balances carried by the EPF.<sup>3</sup>

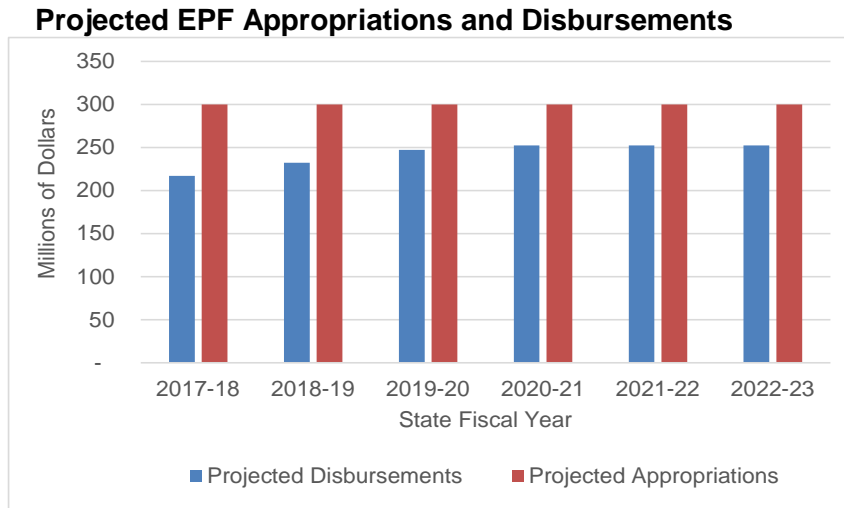
Disbursements exceeded appropriations in SFY 2001-02 as there was no EPF appropriation that year; however, two appropriations were made in the following year. Beginning in SFY 2013-14 appropriations have exceeded disbursements through SFY 2016-17, and are projected to do so through SFY 2022-23.

<sup>3</sup> *Effective Management of the Environmental Protection Fund*. Office of the New York State Comptroller. June 2010. See: [http://osc.state.ny.us/reports/environmental/epf\\_capstone.pdf](http://osc.state.ny.us/reports/environmental/epf_capstone.pdf).

The level of spending has increased over the last two State fiscal years, with SFY 2016-17 reaching an historic high of \$195.6 million. Annual disbursements averaged \$152.9 million in the five-year period immediately preceding SFY 2016-17; as with appropriations, that figure was down somewhat from the preceding five years. Over the life of the EPF through SFY 2016-17, annual disbursements have averaged \$113.2 million.

In the FY 2019 Capital Program and Financing Plan, the Division of the Budget (DOB) projects that spending from the EPF will continue to increase through SFY 2021-22 and then level off as shown in Figure 3. Average annual disbursements are projected to be \$242.4 million over the six-year period (including SFY 2017-18), an increase of nearly 24 percent over the recent historic high.

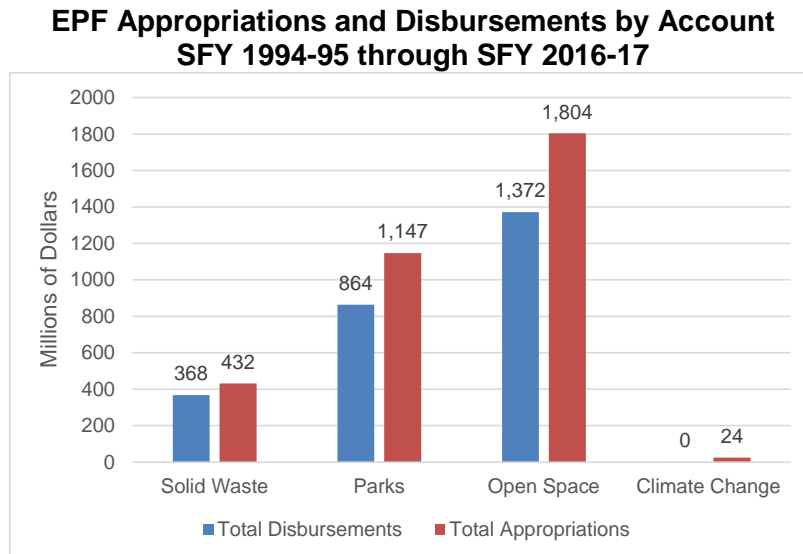
**Figure 3**



Source: New York State Division of the Budget

As shown in Figure 4, since the inception of the EPF through SFY 2016-17, the majority of total appropriations and disbursements have come from the Open Space Fund.

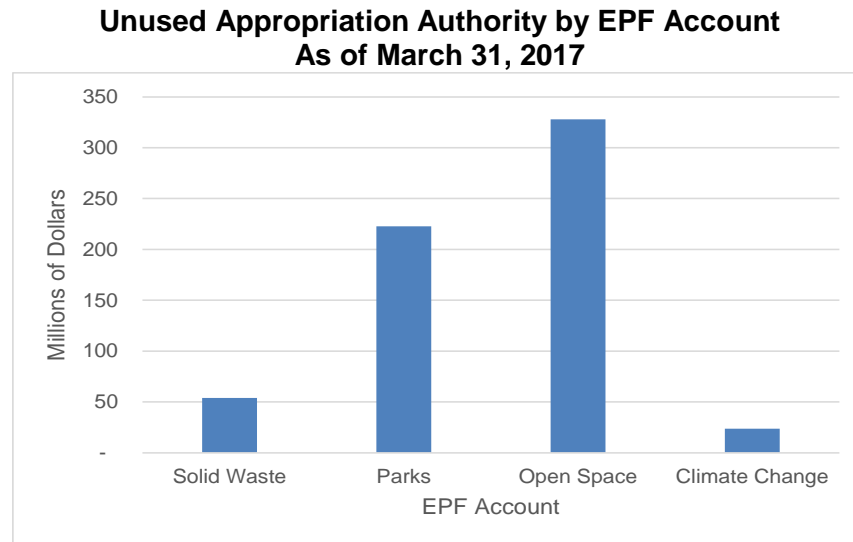
**Figure 4**



Source: Office of the State Comptroller

As of March 31, 2017, \$628.3 million in unused EPF appropriation authority remained in force, with the largest amount in the Fund's accounts for Open Space and Parks as shown in Figure 5. Minimal appropriation authority from the Climate Change account had been used in support of projects.

**Figure 5**



Source: Office of the State Comptroller

DEC is required to report quarterly on the status of projects receiving assistance pursuant to the Environmental Protection Act, as well as total appropriations, total project costs, total commitments, total outstanding encumbrances, year-to-date disbursements, life-to-date disbursements, and total uncommitted balance.<sup>4</sup> While the DEC has reported annually on open space conservation projects undertaken in each calendar year since 2007, the Office of the State Comptroller has been able to identify only one report that broadly addresses EPF programs. That 2013 report, *New York State Environmental Protection Fund: 20<sup>th</sup> Anniversary*, included descriptions of programs, examples of projects funded through EPF and detailed figures on appropriations through SFY 2013-14, but did not include the detailed information required by the 2007 law.

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<sup>4</sup> Chapter 258, Laws of 2007.

### III. EPF Cash Sweeps and Bonding

Unused appropriation authority is not equivalent to the cash balance in the EPF, in part because prior year cash sweeps authorized in various enacted State Budgets have diminished the Fund’s cash balances. Beginning in SFY 2002-03 and periodically through SFY 2015-16, the EPF has been targeted for sweeps of cash to the General Fund in order to provide budget relief. During this period, a total of \$953.7 million, or 28 percent of appropriation authority through SFY 2016-17 has been transferred from the EPF to the General Fund. Of that total, bond proceeds replaced \$446.5 million. Nearly 15 percent of total appropriations through SFY 2016-17, or \$507.2 million, has been swept from the Fund and not replenished, as shown in Figure 6.

**Figure 6**

**Cash Sweeps from the EPF to the General Fund  
(in thousands)**

| State Fiscal Year | Sweeps Replaced With Bond Proceeds | Unreplenished Sweeps | Total     |
|-------------------|------------------------------------|----------------------|-----------|
| 2002-03           | \$111,000                          | \$235,000            | \$346,000 |
| 2003-04           | 43,000                             | 33,571               | 76,571    |
| 2004-05           | 7,556                              | 23,600               | 31,156    |
| 2005-06           | 52,000                             | 10,000               | 62,000    |
| 2006-07           | 0                                  | 0                    | 0         |
| 2007-08           | (556)                              | 20,000               | 19,444    |
| 2008-09           | 100,000                            | 175,000              | 275,000   |
| 2009-10           | 83,484                             | 10,000               | 93,484    |
| 2010-11           | 10,000                             | 0                    | 10,000    |
| 2011-12           | 0                                  | 0                    | 0         |
| 2012-13           | 0                                  | 0                    | 0         |
| 2013-14           | 15,000                             | 0                    | 15,000    |
| 2014-15           | 0                                  | 0                    | 0         |
| 2015-16           | 25,000                             | 0                    | 25,000    |
| 2016-17           | 0                                  | 0                    | 0         |
| Total             | \$446,484                          | \$507,171            | \$953,655 |

Source: Office of the State Comptroller

Note: With respect to the Unreplenished Sweep amount for SFY 2003-04, Article VII language authorized \$42.96 million to be swept; however, only \$33.571 million was actually swept. With respect to the Sweeps Replaced with Bond Proceeds amount for SFY 2009-10, Article VII language authorized \$95 million to be swept and replaced with bond proceeds; however, only \$83.484 million was swept.

With respect to the column in Figure 6 titled “Sweeps Replaced With Bond Proceeds”, replacement of swept funds with bond proceeds did not necessarily occur in the same years as related sweeps. In most years, Article VII language authorizing such EPF sweeps stated that the amount of the sweep was made available through the use of bond financing for activities in the EPF. With respect to SFYs 2008-09, 2013-14 and 2015-16, the intent to replace swept funds from the EPF with bond proceeds was expressed by the Executive less formally. The Unreplenished Sweeps column represents sweeps from the EPF to the General Fund where there was no Article VII language to replace such sweeps with bond proceeds.



In the case of sweeps backed by bonding, State public authorities borrow to fund eligible EPF capital projects, which thereby “frees up” an equivalent amount of cash which is transferred from the EPF to the General Fund. This approach obligates the State to pay debt service on the bonds, expenses that would be avoided if EPF funds were used to pay for these projects on a pay-as-you-go basis. Sweeps have targeted cash that had built up in the EPF. Chapter 82 of the Laws of 2002, part of the SFY 2002-03 Enacted State Budget, added authority for the Division of the Budget to direct the State Comptroller to transfer up to \$235 million from the General Fund to the EPF if in any fiscal year moneys in the Fund are insufficient to meet actual and anticipated disbursements. This provision has been amended periodically as certain additional cash sweeps of EPF funds were authorized. Currently, the amount authorized for transfer from the General Fund to replenish the EPF at DOB’s direction is \$447.2 million (\$60 million in unreplenished sweeps are not subject to this provision). DOB has never used this authority.

## IV. Sources of Funding

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State Finance Law directs that certain revenue streams are to be deposited in the EPF. These include:

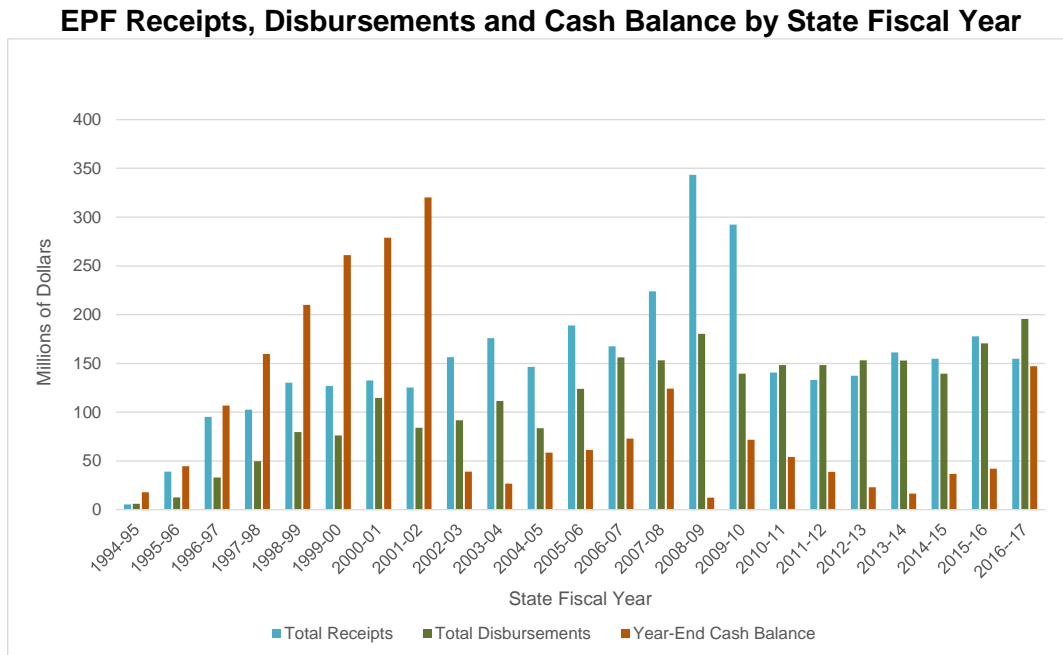
- Revenue, interest and penalties collected under the State's Real Estate Transfer Tax (RETT, Article 31 of the Tax Law). Comprising nearly 79 percent of total Fund receipts since the Fund's establishment through SFY 2016-17, this revenue has been by far the largest single source of dedicated funding for the EPF. RETT revenues deposited to the EPF have been statutorily capped at \$119.1 million annually since SFY 2010-11.
- Of unclaimed container deposits that are payable to the State, \$23 million plus the amount collected in excess of \$122.2 million.
- Not less than \$8 million in penalties collected for violations of the State's container deposit law. The Executive Budget for SFY 2018-19 proposes to remove the minimum threshold, while continuing to direct the penalties to the EPF.
- Proceeds from sales, leases, grants of easements, and lesser interests in State-owned underwater lands (primarily the beds of navigable lakes and rivers), less administrative costs.
- Service charges associated with conservation themed license plates.
- Up to \$5 million annually in proceeds from the sale of surplus Department of Transportation or Office of General Services real property.
- Proceeds from the repayment of EPF municipal landfill closure grants.
- Civil penalties and fines collected for any violation of State law restricting the sale of certain products containing mercury.
- Up to \$5 million in fees charged for registrations, licenses and certifications associated with State regulation of pesticides.
- Fees associated with permits for regulated activities in freshwater and tidal wetlands.

In addition to the resources described above and as discussed previously, bond proceeds have been deposited to the EPF. Such borrowed funds have supported spending that otherwise would have been paid for with resources that were swept from the EPF to the General Fund for budget relief. Between SFY 2002-03 and SFY 2015-16, the years in which EPF fund sweeps occurred, a total of \$450 million in bond proceeds was deposited to the EPF.

As shown in Figure 7, through SFY 2009-10, lags in disbursements from the Fund resulted in receipts significantly and consistently outpacing spending. This led to the accumulation of significant cash balances in the Fund, reaching a record level of \$320.3 million in SFY 2001-02. As noted above, starting in SFY 2002-03, the cash balance was drawn upon with a multiyear series of 10 cash sweeps, which cumulatively removed \$953.7 million in cash from the Fund.

Amendments to the Tax Law increased the amount of the RETT to be deposited in the EPF from \$33.5 million in SFY 1995-96 to a high of \$237 million in SFY 2008-09, driving overall receipts higher.<sup>5</sup> Other dedicated revenue sources were more variable, based on factors such as funds realized through sale of surplus State property.

**Figure 7**



Source: Office of the State Comptroller

As shown in Figure 8, Miscellaneous Receipts (which includes other dedicated revenue sources and bond proceeds) spike periodically, ranging from a low of \$5.3 million in SFY 1994-95 to a high of \$102.6 million in SFY 2008-09. In SFY 2010-11, the Enacted Budget reduced the amount of RETT revenue deposited in the EPF from \$199.3 million per year to \$119.1 million.<sup>6</sup>

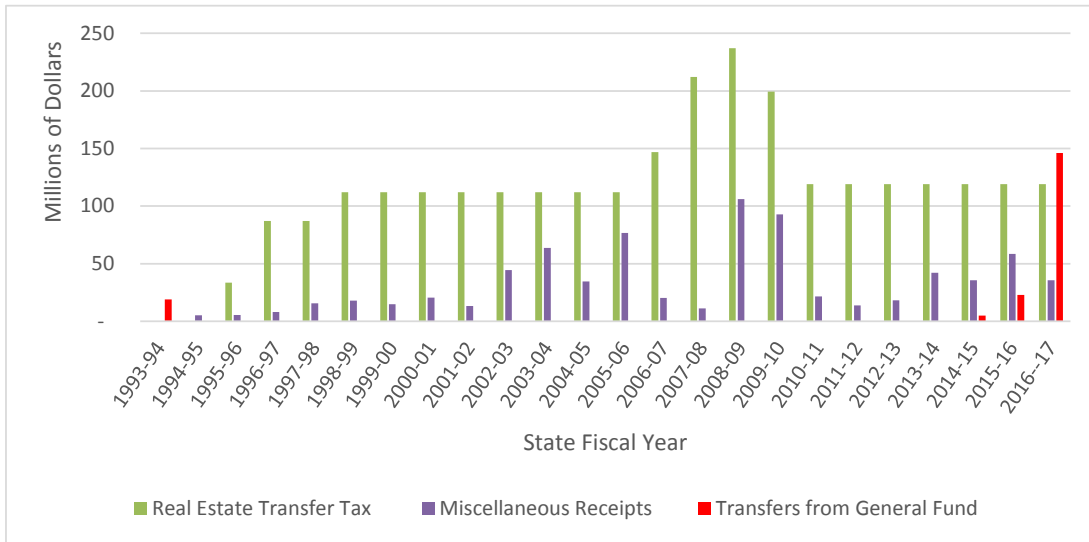
In the same year, the EPF appropriation was cut from \$212 million in SFY 2009-10 to \$134 million, where it remained through SFY 2012-13. During this time disbursements slightly outpaced both receipts and appropriations. This, coupled with \$507.2 million in unreplenished cash sweeps from SFY 2002-03 through SFY 2013-14, resulted in the Fund's cash balance falling to \$16.6 million at the end of the latter year, a near low point in the Fund's history.

<sup>5</sup> Over time, the statutory cap on the level of RETT revenues has been both raised and lowered. Chapter 258 of the Laws of 2007 set higher caps, including a cap of \$287 million for SFY 2008-09, representing the highest level, although this statute was amended and this level of dedication was never reached.

<sup>6</sup> Chapter 99, Section 2 of the Laws of 2010.

Figure 8

Transfers to the EPF by Type of Revenue  
SFY 1993-94 through SFY 2016-17



Source: Office of the State Comptroller

The EPF was initially funded with a General Fund transfer of \$19 million in SFY 1993-94. No further transfers of this type were made until 21 years later, during SFY 2014-15, when EPF disbursements were supported in part with \$5 million from the General Fund. General Fund transfers were also made in the next two years – \$23 million in SFY 2015-16 and \$146 million in SFY 2016-17, the last largely reflecting \$120 million in funding from extraordinary monetary settlements between the State and financial institutions.

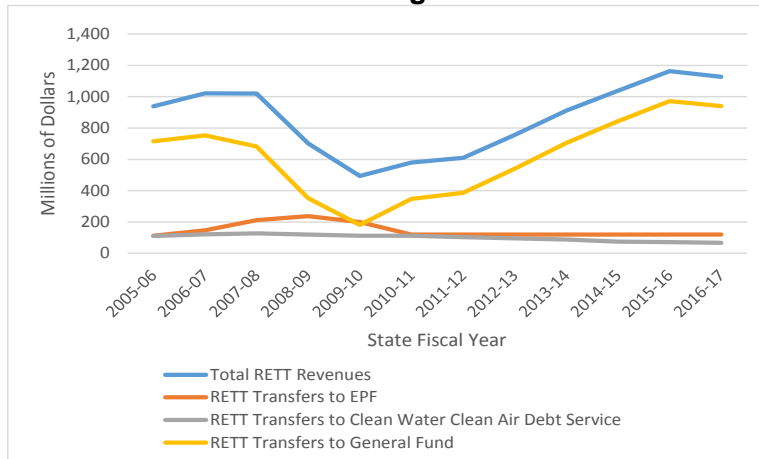
Such General Fund support for the EPF helped make possible the record level of spending that occurred in SFY 2016-17. Without these transfers, resources from the Fund’s dedicated revenues would have been insufficient to support the spending that occurred in SFY 2016-17.

The EPF balance at the end of SFY 2016-17 was \$147.2 million, the highest in 15 years. This balance is largely the result of the significant infusion of General Fund resources that year. These resources, along with annual General Fund transfers of \$28 million, which the SFY 2018-19 Executive Budget Financial Plan anticipates in the current year and in each of the coming four years, will help support projected spending over the next several years.

The annual contribution to the EPF from RETT revenues has been \$119.1 million since SFY 2010-11, and is projected by DOB to remain at this level through SFY 2022-23. Based on projections for future dedicated receipts in the FY 2019 Capital Program and Financing Plan, additional General Fund transfers beyond the \$28 million annual transfer currently included in the State’s Financial Plan, or other funding sources, will be required by SFY 2019-20 to meet projected EPF disbursements.

**Figure 9**

**Real Estate Transfer Tax Revenues and Transfers  
SFY 2005-06 through SFY 2016-17**



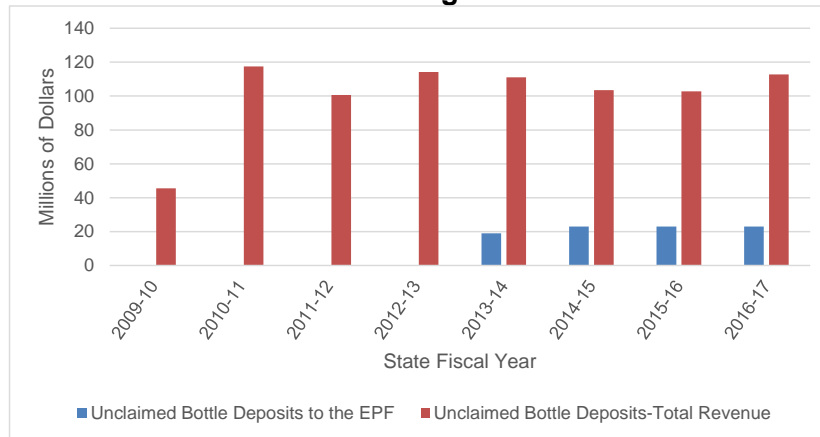
Source: Office of the State Comptroller

The FY 2019 Capital Program and Financing Plan indicates that State personal income tax and/or sales tax revenue bonds will be issued for the EPF during the Capital Plan period, which extends through SFY 2022-23. Previous capital plans have also indicated expectations of such financing in recent years. The EPF’s increasing reliance on General Fund transfers and planned bond financing, rather than on dedicated revenue streams, raises questions about its status as a dedicated Fund with permanent, committed resources going forward.

From SFY 2014-15 through SFY 2016-17, General Fund transfers made up 26 percent of total Fund revenues, with one-time settlement funds representing well over half that total. Such increased reliance on nonrecurring revenues, other General Fund receipts and borrowing could make the EPF more susceptible to unexpected cuts. This concern arises given that the General Fund is the State’s primary resource for responding to various budgetary pressures including federal funding changes, shortfalls in revenue collections, or new spending needs, and the State’s statutory debt capacity is constrained.

**Figure 10**

**Revenue from Unclaimed Bottle Deposits  
SFY 2009-10 through SFY 2016-17**



Source: Office of the State Comptroller

At least two of the sources of revenue dedicated to the EPF generate revenue significantly in excess of the amount that State law directs to be deposited in the Fund. As shown in Figures 9 and 10, only part of the revenues of the RETT and unclaimed bottle deposits are dedicated to the EPF.

The SFY 2009-10 Enacted Budget included amendments for the State to reclaim unclaimed deposits from entities (deposit initiators) required under the Container Deposit Law to charge deposits for the purchase of containers of certain beverages, primarily soda, beer and water. Beginning in SFY 2013-14, a portion of these funds was deposited in the EPF. Since SFY 2009-10, unclaimed deposit revenues paid to the State totaled \$807.7 million; \$88 million, or 10.9 percent, of these funds have been transferred to the EPF.

A recent audit by the Office of the State Comptroller found that the Department of Taxation and Finance (DTF) was not adequately monitoring and enforcing controls over deposit initiators' management and repayment of unclaimed deposits. The audit found weaknesses in DTF's oversight, including its failure to collect penalties for certain late or unfiled deposit initiator quarterly reports, and failure to follow up on certain indicators of material errors and/or fraudulent reporting.<sup>7</sup> The shortcomings in DTF's oversight could be depriving the EPF of an important source of dedicated revenue since, each year, \$23 million in unclaimed deposits and certain penalties plus collections in excess of \$122.2 million are directed to be deposited in the EPF. The highest level of unclaimed bottle deposit collections in any completed State fiscal year was \$117.5 million in SFY 2010-11. Improved efforts to collect the State's share of unclaimed bottle deposits by DTF could provide additional resources to support the EPF as well as other State priorities.

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<sup>7</sup> *Department of Taxation and Finance: Controls Over Unclaimed Bottle Deposits*, (Report 2016-S-96). Office of the State Comptroller. December 2017. See: <http://osc.state.ny.us/audits/allaudits/093018/16s96.pdf>.

## V. Conclusion

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Since its inception, the Environmental Protection Fund has been an important tool in helping New York State meet its environmental conservation needs. In the 24 years since its enactment, billions in funding for environmental programs have been authorized and spent from the EPF. By establishing a permanent fund with a dedicated revenue stream, the State has been able to meet a wide variety of environmental protection and recreation needs for the State and its local governments.

Through direct purchase and conservation easement programs, EPF funding has allowed for the protection of incomparable open spaces in the Adirondacks and throughout the State, providing unique recreational opportunities, keeping farmland in production and preserving important ecosystems. Programs supporting zoos, aquaria and botanical gardens provide New Yorkers with opportunities to learn about and appreciate the natural world. Initiatives to control water pollution, fund revitalization of and public access to our waterfronts, and restore aquatic ecosystems all protect waterbodies that support an important tourism economy and, in many cases, provide drinking water for New Yorkers. EPF resources for environmental justice grants and the Brownfield Opportunity Area program help residents in areas suffering from systemic neglect and legacy pollution to rebuild healthier communities.

Through the end of SFY 2016-17, the Fund has received appropriations of \$3.4 billion, over \$2.6 billion of which has been spent for a variety of environmental projects and programs. In recent years, the EPF has experienced historic levels of appropriations and disbursements, and these levels are projected to continue in the coming years. Given the competing demands for scarce budget resources, these figures reflect the recognition that the EPF has played a vital role in helping the State meet its environmental conservation objectives and will remain an important vehicle in financing critical programs and projects in the years ahead.

As is true of the State's capital investments more broadly, DEC could further improve the Fund's programmatic value by publicly providing annual, comprehensive assessments on the status of and the need for programs and projects that may be supported by the EPF over a multi-year planning period. It's also important that DEC consistently meet statutory reporting requirements related to the Fund. Such improved reporting and planning could enhance transparency of, and public participation in, decisions regarding the use of Fund resources.

The many State and local projects that have been funded through the EPF over the past 25 years have served to preserve and promote environmental and recreational resources for current and future generations of New Yorkers. Ensuring the preservation of this important dedicated funding stream will allow such critical investments to continue into the future.

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