



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

Division of State Government Accountability

Collection and Use of Oil Spill Funds

Department of Environmental Conservation



Report 2014-S-59

August 2015

Executive Summary

Purpose

To determine if the Department of Environmental Conservation (Department) is collecting all fees due the New York Environmental Protection and Spill Compensation Fund (Oil Spill Fund or Fund) in compliance with applicable laws and if all expenditures from the Fund are reasonable, appropriate, and associated with spill remediation projects. The audit covers the period April 1, 2012 through April 8, 2015.

Background

Chapter 845 of the Laws of 1977 established the Oil Spill Fund to pay for the cleanup and removal of petroleum spills. The statute assigns the State Comptroller administrative and operational responsibility for the Fund as well as the duty to review and process all cleanup bills submitted for payment. The Department is responsible for providing technical assistance and oversight for spill remediation efforts and for ensuring that only allowable costs are charged to the Fund. The Department is also responsible for licensing, registering, and collecting appropriate fees from petroleum storage facilities. Facilities with a total petroleum storage capacity of less than 400,000 gallons are registered as Petroleum Bulk Storage (PBS) facilities, and must pay the Department a five-year registration fee of up to \$500. Facilities with a capacity of 400,000 gallons or more are licensed as Major Oil Storage Facilities (MOSFs), and generally must pay monthly licensing fees and surcharges based on the reported volume of petroleum products they transfer.

The Fund's major sources of revenue are the license fees and surcharges charged to MOSFs for each barrel of petroleum imported for use in the State. The Fund also collects fees from PBS facilities and reimbursements of cleanup costs from spillers. During the two fiscal years ended March 31, 2014, the Fund collected about \$96 million, including about \$61 million from MOSFs, \$22 million from parties responsible for spills, \$8 million from PBS facilities, and \$5 million in federal disaster relief funding. For the same period, the Department spent about \$60 million for spill-related expenses and administrative costs, and transferred about \$30 million to the State's Hazardous Waste Remedial Fund. As of March 31, 2014, the balance in the Fund was approximately \$28 million.

Key Findings

- Our tests showed the Department generally collected all fees due the Fund for the facilities we tested. However, of 11 sampled MOSFs, we identified 8 that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped. For the sampled facilities, these inaccuracies did not materially affect the revenue collected by the Department.
- We identified four facilities that may be incorrectly registered as PBS operations instead of larger MOSFs, thereby potentially avoiding appropriate oversight and reporting as well as higher amounts of fees and surcharges.
- The Department should be able to promptly detect and correct many of the discrepancies we identified by periodically analyzing the facility data that it already collects.

- The Department's internal controls over payment of cleanup, administrative, and indirect costs provide reasonable assurance that only appropriate expenses were charged to the Fund.

Key Recommendations

- Improve monitoring activities to verify the accuracy of information reported by facilities and the licensing status of facilities, including analysis of available facility data, to identify those most at risk of inaccurate reporting.
- Follow up on the licensing status of the PBS facilities identified as potentially misclassified.

Other Related Audit/Report of Interest

[Department of Environmental Conservation: Selected Aspects of Inactive Hazardous Waste Site Remediation Cost Recovery \(2014-S-14\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

August 13, 2015

Mr. Mark Gerstman
Acting Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Dear Mr. Gerstman:

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 Environmental Conservation entitled *Collection and Use of Oil Spill Funds*. 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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Background

Chapter 845 of the Laws of 1977 established the New York Environmental Protection and Spill Compensation Fund (Oil Spill Fund or Fund) to pay for the cleanup and removal of petroleum spills. The statute assigns the State Comptroller administrative and operational responsibility for the Fund. The Department of Environmental Conservation (Department) is charged with implementing the program by providing technical assistance and oversight for cleanup and removal activities and ensuring that only allowable costs are charged to the Fund.

The major source of revenue into the Fund is derived from fees and charges levied on oil storage facilities licensed and registered by the Department, which fall into two categories based primarily on their overall capacity. Smaller operations with a storage capacity less than 400,000 gallons are classified as Petroleum Bulk Storage (PBS) facilities. Major Oil Storage Facilities (MOSFs) are larger and have storage capacities of 400,000 gallons or more. As of December 2014, there were approximately 320 MOSFs with active licenses in the State and approximately 38,000 PBS facilities with active registrations.

Generally, the smaller PBS facilities simply pay a recurring registration fee of \$500 or less once every five years. In contrast, the larger MOSFs must pay license fees and surcharges based on the volume of petroleum products they import. MOSFs are therefore subject to significantly greater record-keeping and reporting requirements. Most MOSFs are required to submit a monthly Major Petroleum License Fee Report (Report) to the Department, although some are allowed to report annually. Monthly Reports must include the number of barrels received at the facility, the number of barrels subject to the license fees and surcharges, as well as the total amount to be paid to the Department. According to Department of Transportation regulations (17 NYCRR 30.9(f)) and certain declaratory rulings, both the Department and the licensee have 30 days after the filing date to dispute any amounts reported.

Until April 13, 2015, Article 12 of the Navigation Law imposed the following fees and surcharges on MOSFs:

- An 8 cent per barrel license fee on any petroleum product used in the State, upon first transfer into the State;
- A 4.25 cent per barrel surcharge on petroleum used in the State; and
- A 1.5 cent per barrel surcharge on petroleum subsequently transferred out of the State.

Facilities may claim a transshipment credit on barrels for which they are the first point of transfer into New York State but which are subsequently not used in the State. Between April 2012 and August 2014, licensees reported over 807 million barrels of petroleum transferred into MOSFs, of which about 600 million were reported as being subject to the full 12.25 cent per barrel fee and surcharge.

Beginning September 1, 2015, based upon an amendment to Section 174 of the Navigation Law, the license fee for MOSFs increased from 8 to 9.5 cents per barrel and the surcharge on petroleum

transferred out of State grew from 1.5 to 13.75 cents per barrel. Of the 13.75 cents, 12.25 cents remains in the Fund to be used on cleanup and removal of petroleum spills, while the remaining 1.5 cents is transferred to the Hazardous Waste Remedial Fund. The 4.25 cent per barrel in-State surcharge collections are also transferred to the Remedial Fund.

During the two fiscal years ended March 31, 2014, the Fund collected about \$96 million, including about \$39 million in license fees and \$22 million in surcharges from MOSFs; \$8 million in registration fees from the smaller PBS facilities; about \$5 million in federal disaster relief funding; and over \$22 million in cost reimbursements, interest, and penalties assessed against those responsible for spills. For the same period, the Department spent about \$60 million from the Fund, including \$26 million for spill-related expenses and \$30 million in administrative costs. The remaining costs charged to the Fund pertained to administrative expenses of several State supporting agencies. In addition, the Department transferred about \$30 million from the Fund to the Hazardous Waste Remedial Fund. As of March 31, 2014, the Fund's balance was approximately \$28 million.

Audit Findings and Recommendations

The Department's internal controls over payment of cleanup costs, as well as administrative and indirect cost allocations, provide reasonable assurance that only appropriate, spill-related expenses were charged to the Fund. Our tests also showed that, based on their current classification, the Department generally collected all the fees due the Fund for the storage facilities that we tested. However, we identified numerous examples where MOSFs inaccurately reported the volume of petroleum products received, as well as that subject to fees and surcharges or available for credits. At the facilities we sampled, the aggregate differences that we identified did not materially affect the overall revenue that should have been collected by the Department.

In addition, we identified four facilities that may be incorrectly registered as PBS facilities instead of larger MOSFs. A misclassification could significantly impact the amount that an individual facility is required to pay. By periodically analyzing and following up on facility data that it already collects, the Department should be able to detect and correct many of the reporting inaccuracies we identified, as well as identify facilities that may be improperly classified and thereby avoiding proper oversight.

Accuracy of Facility Reporting and Licensing

Facility Petroleum and Revenue Reporting

Our testing of reporting by 11 MOSFs identified eight (73 percent) that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped (for which a credit would be claimed). The sample results are shown in the following table:

Accuracy of Petroleum Reporting for a Sample of 11 MOSFs

Type of Barrels	Barrels Reported	Actual Barrels	Discrepancy
Received	37,180,943	12,030,185	25,150,758
Subject to Fees and Surcharges	10,020,328	10,094,715	(74,387)
Transshipped	413,367	354,094	59,273

Overall, reports filed by these sampled facilities included significant overreporting of barrels received and minor underreporting of barrels subject to fees and surcharges. Overreporting occurred for various reasons, including simple conversion errors, such as when a facility reported quantities in gallons rather than barrels; or the reporting of non-petroleum products, which are not subject to fees and surcharges. Additionally, some facilities improperly calculated the number of barrels they were required to report or applied transshipment credits incorrectly. The net impact of these discrepancies was relatively minor (about \$15,500 in lost revenue). However, the overall potential for inaccurate reporting is much higher, since the 11 facilities only accounted for about 15 percent of the total barrels reported by all MOSFs.

We also identified approximately 160 facilities that submitted some monthly Reports showing they did not receive petroleum during the period April 2012 through August 2014, some of which showed no petroleum receipts for the entire 29-month period. Additionally, Department data showed some of the facilities were inactive, and therefore generally do not submit Reports. We observed 16 of the purportedly inactive facilities to look for signs of fuel shipping activity. At three of the facilities we observed fuel trucks entering and exiting. Two of these facilities later submitted Reports indicating that no petroleum transfers had occurred for the month during which we observed the facilities. The third facility only reports annually, so the activity for a specific month when our observations occurred could not be determined from the Report. Our observations suggest there is a potential that these facilities may have had reportable fuel activity which was not accurately reported to the Department.

We found other types of inaccurate reporting during our visits to the 11 MOSFs to verify petroleum reporting. Some facilities had reported and paid fees and surcharges unnecessarily on barrels that had been transferred into the State at a different facility and on non-petroleum-based products. Additionally, some facilities erroneously claimed transshipment credits on barrels not eligible for such a credit. For example, one facility claimed transshipment credits on about 35,000 barrels that were not eligible for the credit.

Petroleum reporting inaccuracies may have occurred to some degree because the Navigation Law does not contain detailed information on the types of products subject to fees and surcharges. Although the Law does list some covered products, there is no detailed guidance regarding those products which should be excluded. Also, the complexity of the Law may confuse some licensees regarding when such fees or surcharges apply. The Department provides some guidance on the MOSF license application and on the monthly Report. However, given the results of our testing and comments from facility staff, there is some confusion about how to report accurately. Department officials agreed and told us they will provide additional instructions to the licensees.

Facility Registration and Licensing

Because of the lower fee structure and reduced record-keeping and reporting requirements imposed on the smaller PBS facilities, there is a significant incentive for operators to avoid licensing as an MOSF if possible. One way to accomplish this is to divide what would otherwise be a large facility into a number of smaller facilities, each with a capacity below the 400,000-gallon PBS limit. In a move that may have partially addressed this risk, beginning in 2008, Section 17-1003 of the Environmental Conservation Law more specifically required that multiple facilities on a continuous property be registered by the owner of that property.

When we brought the risk of misclassified facilities to the Department's attention, they cautioned that the determination of whether a facility is more properly classified as a PBS or an MOSF is based on numerous criteria, including some that are legal and/or technical in nature and therefore quite complex. We examined Department data about the size, location, ownership, and affiliations of currently registered PBS facilities and identified seven facilities that we considered to be at significant risk for misclassification. Based on our testing and observations, we concluded that four of these facilities may actually be two MOSFs. The four PBS facilities consist of two sets of

operations that, for each set:

- Are located at the same physical address;
- Are on properties owned by the same company;
- Are led by the same executive teams; and
- Have combined storage capacities that significantly exceed the 400,000-gallon limit for a PBS operation (749,000 and 651,000 gallons, respectively).

When we asked the Department for a further review and determination of the proper classification of these sites, officials told us that they too had discovered potential problems with the registrations of these four PBS facilities during the summer of 2014. However, officials had not yet completed their evaluation of the sites as of April 2015 due to other program priorities.

Our analysis of Department data also identified 47 MOSFs whose licenses had expired, but which continued to submit Reports to the Department during the period April 2012 through August 2014. Most of these facilities simply reported that they did not receive petroleum or owe fees or surcharges during the period. However, Reports filed by four of these facilities showed they had received about 1 million barrels of petroleum, even though they were no longer licensed. We found the Department's unit that is responsible for facility licensing was unaware that these facilities continued to operate, in large part due to a lack of communication with the unit that handles the monthly Reports. The two units should share information so they have reasonable assurance that operating facilities are reporting and submitting fees as required and that unlicensed and purportedly inactive facilities are not operating.

Department officials indicate that they review the facility registration applications and petroleum Reports to ensure accuracy. However, the data is generally self-reported and certified by the licensee with little independent verification by the Department that would help to identify errors or irregularities. We noted that the Department does conduct inspections at selected facilities, but those inspections are primarily focused on the safety of the facilities. To date, no efforts have been made to include verification of any capacity or reporting issues which could impact the number of barrels subject to fees and surcharges.

Facility Data Analysis

We were able to identify many of the reporting, registration, and licensing issues discussed in previous sections of this report by analyzing data the Department already maintains about each storage facility. This includes information on total facility storage capacity, individual tank capacities, average daily throughput and owner information, as well as monthly petroleum Reports. Particularly in the case of MOSFs, which must report much more data, our analyses identified facilities where data indicated an increased risk of potential reporting problems. Some of the anomalies highlighted by our analysis include:

- MOSFs that reported exactly the same number of barrels subject to fees and surcharges for numerous months;
- Land-based facilities that claimed certain credits only available to shipping vessels such as

- barges; and
- MOSFs with an expired license that were still submitting petroleum Reports.

By doing similar analyses on a routine basis, the Department should be able to more effectively target its available resources toward facilities that exhibit an increased risk of reporting inaccuracies or other potential problems. This would enable it to more promptly identify the types of conditions that we found and take timely corrective action.

However, the usefulness of any data analyses is inherently dependent on having complete and accurate data. We found some inaccuracies in the Department's facility data. For example, during our facility visits we found the actual storage tank design capacities differed from the Department's records for 2 of 11 MOSFs and 4 of 7 PBS facilities. At one facility, the reported capacity for 9 of 13 tanks (69 percent) was incorrect by amounts ranging from 621,000 gallons more than to 126,000 gallons less than their actual design capacity. Overall, the facility overreported its capacity by almost 2 million gallons. Department officials pointed out that these discrepancies are relatively small in relation to the overall tank size (i.e., 5 to 7 percent of tank capacity). However, since tank capacity is a major determinant of the type of facility and related fees to be paid, it is critical that Department records be correct.

Oil Spill Fund Expenditures

Our tests of expenditures found that the Department has established adequate controls over cleanup costs to provide reasonable assurance that only appropriate, spill-related expenses are charged to the Fund. The Department conducts multiple reviews of costs charged to the Fund for oil spill cleanups. The State Comptroller also reviews all cleanup vouchers submitted for payment including supporting documentation of the charges. The Department selects cleanup contractors based on the value they can provide considering predetermined factors specifically related to oil spill cleanup. We found the selection process was reasonable and functioning as intended.

The Department's administrative costs include direct personal services, non-personal services, and support services. They also include the cost of services provided by the Department of Law, which is governed by a memorandum of understanding (MOU). Based on our review of Fund-related administrative and indirect costs, we concluded the expenditures were reasonable.

Recommendations

1. Implement formal procedures to monitor the accuracy of reported petroleum activity, fee collection, and general facility information. Such activities may include, but not be limited to, periodic analyses to identify indications of inaccurate reporting or operations.
2. Follow up on the licensing status of the PBS facilities we identified as potentially misclassified.
3. Provide guidance to licensees and registrants to clarify how to correctly report petroleum activities and revenues due the Fund.

4. Implement formal steps to share petroleum facility information among staff responsible for monitoring petroleum storage facilities and collecting revenues due the Fund.

Audit Scope and Methodology

Our audit determined whether the Department collects all fees due the Oil Spill Fund in compliance with applicable laws and whether the Department's expenditures from the Fund are reasonable and appropriate costs associated with petroleum spill remediation projects. Our audit scope included the period April 1, 2012 through April 8, 2015.

To accomplish our audit objectives, we reviewed applicable laws, including Chapter 845 of the Laws of 1977, Article 12 of the Navigation Law, and the Environmental Conservation Law, and interviewed Department officials to gain an understanding of Oil Spill Fund revenue collection and expenditure activities. We analyzed the Department's data for the period April 1, 2012 through August 31, 2014. We also conducted site visits to a judgmental sample of MOSF and PBS facilities, interviewed facility officials, and reviewed relevant records for the facilities' Reports and applications.

We selected our sample of MOSFs based on risks we identified from facility data for the period April 2012 through August 2014 on barrels not subject to license fees and surcharges, transshipment credits, facility storage capacity, and facility address. However, we only conducted testing on transactions for the period January 1, 2014 through August 31, 2014. During that period 388 MOSFs reported receiving over 248 million barrels of petroleum. Our selection included land-based storage facilities and excluded vessels. We also obtained and reviewed the Reports and facility applications for the sampled facilities. We examined the Department's internal controls as they related to our objectives, and assessed their adequacy as they related to our audit objectives. In addition to the findings outlined in this report, there were some findings of lesser significance which were communicated to officials for their review but did not warrant inclusion in the final report.

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 addition, per Chapter 845 of the Laws of 1977, the State Comptroller is assigned administrative

and operational responsibility for the Fund. In fulfilling this role, the Comptroller reviews and processes all cleanup vouchers submitted for payment and seeks reimbursement for cleanup costs from those entities responsible for the discharge of petroleum. Although these may be considered management duties, the Department is primarily responsible for determining which fees and surcharges are payable by facilities and which expenses are appropriately paid by the Fund. Therefore, in our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant 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.

Reporting Requirements

A draft copy of the report was provided to Department officials for their review and formal comment. We considered their comments in preparing this final report and attached them in their entirety at the end of it. In general, officials agreed with our recommendations, but questioned our audit's risk-based approach. Our rejoinders to certain Department statements are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation 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 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

OFFICE OF THE COMMISSIONER

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JUL 13 2015

Mr. John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236-0001

Dear Mr. Buyce:

The New York State Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's (OSC) draft audit report 2014-S-59 on the Collection and Use of Oil Spill Funds. Attached is a pdf copy of DEC's response to the draft audit report. The signed hard copy of this letter will be mailed to you for your records.

Thank you for the opportunity to respond to OSC's draft report. If you need to discuss any of this response, please contact Ann Lapinski at (518) 402-9147.

Sincerely,


Joseph J. Martens

Attachment

c: A. Lapinski



Department of
Environmental
Conservation

**Department of Environmental Conservation
Collection and Use of Oil Spill Funds
2014-S-59
Response to Draft Report**

The Department of Environmental Conservation (DEC or Department) has reviewed the draft report dated June 12, 2015 containing the findings and recommendations of the Office of the State Comptroller (OSC) in connection with OSC's audit of Oil Spill Fund Collection and Use. DEC's response to the draft report contains three sections. The first section provides DEC's general comments regarding this report. The second section provides DEC's comments regarding certain factual inaccuracies and/or areas needing further explanation in the report. The third section is DEC's specific comments on report recommendations.

1) General Comments

DEC is committed to taking certain actions resulting from this audit to the extent available resources allow. Such actions include: 1) using readily available data analysis tools to help identify facilities that are more at risk for being improperly registered/licensed and then targeting these facilities for site inspections; 2) requesting supporting documentation from Major Oil Storage Facilities (MOSFs) on a sample basis to verify the accuracy of amounts reported on Major Petroleum License Fee Reports (MPLFRs); and 3) enhancing the sharing of facility information between Department staff to help ensure facility licensing status and revenue due to the Oil Spill Fund (Fund) are accurate.

Although DEC invites opportunities to continuously improve the program, the Department believes that the report overstates findings and observations relating to the overall accuracy of facility data maintained by the Department, reporting by facilities, and the potential for increased Fund revenue. This is primarily due to the fact that OSC's sample was a targeted sample of high risk facilities based on specific risk factors, not a random sample. A targeted sample is unlikely to yield consistent results across an entire audit population; therefore, findings resulting from such sample cannot be fairly and/or reliably applied to all MOSF and Petroleum Bulk Storage (PBS) facilities. This, coupled with the fact that the audit sample sizes were a very small percentage of the total MOSF and PBS facility populations, underscores DEC's concern.

In addition, each facility must certify, under penalty of law, that the information they report to DEC is accurate. For example, PBS facility owners must certify that their facility's total tank capacity is not greater than 400,000 gallons and MOSFs certify on MPLFRs that the barrels and corresponding license fees and surcharges they report are true and correct. Accordingly, it's incumbent upon the facilities to accurately report facility information to the Department under threat of potential enforcement and significant penalties. Regarding the four PBS facilities identified as possible MOSFs, this is a complicated matter involving facilities that are contiguous to one another which leads to confusion as to whether they should be combined for capacity purposes. Furthermore, these facilities were already being evaluated by the Department to determine if they should be licensed as MOSFs.

The report incorrectly states that DEC inspections do not assess the accuracy of tank capacities. DEC inspection forms explicitly include the verification of registration data, including tank capacities. With regard to reporting guidance on how to correctly report revenues due to the Fund, guidance is provided to MOSFs on the reverse side of the MPLFR. This guidance identifies the information that is to be

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*See State Comptroller's Comments, page 21.

included on each line of the report, the calculations that need to be performed, and the columns where the amounts should be reported. Notwithstanding, DEC will be developing and posting clarifying guidance on its public website to help ensure MOSF petroleum amounts and license fees and surcharges are correctly reported.

2) Comments on Specific Report Content

DEC has identified factual inaccuracies and areas needing further explanation in the report (shown in **bold** type by page of the preliminary findings). Clarifications are provided in the comments that follow:

Page 1, 1st Bulleted Item (Bottom of Page), Sentence 2 - “However, of 11 sampled MOSFs, we identified 8 that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped.”

Page 7, Paragraph 3, Sentence 1 - “Our testing of reporting by 11 MOSFs identified eight (73 percent) that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped (for which a credit would be claimed).”

DEC Comment:

This was a targeted sample of high risk facilities based on specific risk factors, not a random sample. As currently written, this finding implies that the percentage of facilities that reported incorrectly (73 percent) relates to the entire population of MOSF filers, which is misleading. DEC proposes that the above sentences be reworded as follows to indicate that the sample of facilities selected for review was a targeted sample based on specific risk factors identified in the Audit Scope and Methodology section of the report:

Page 1 - “However, of our sample of 11 high risk MOSFs that were selected based on risk factors identified in the Audit Scope and Methodology Section of this report, we identified 8 that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped.”

Page 7 - “Based on our testing of reporting by 11 MOSFs that were determined to be high risk facilities, we identified eight (73 percent) that inaccurately reported the number of barrels of petroleum products received, subject to fees and surcharges, and/or transshipped (for which a credit would be claimed). Since this was a targeted, not a random, sample of high risk MOSFs, no conclusions can be drawn about whether this sample is representative of the entire population of MOSFs.”

Page 5, Last Paragraph, Sentence 1 - “Beginning April 14, 2015, based upon an amendment to Section 174 of the Navigation Law, the license fee for MOSFs increased from 8 to 9.5 cents per barrel and the surcharge on petroleum transferred out of State grew from 1.5 to 13.75 cents per barrel.”

DEC Comment:

This sentence should state that the new license fee rates take effect on September 1st, 2015.

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Page 7, Paragraph 2, Sentences 1 and 2 – “In addition, we identified four facilities that may be incorrectly registered as PBS facilities instead of larger MOSFs. This misclassification could significantly impact the amounts that individual facilities are required to pay.”

DEC Comment:

Although DEC acknowledges that if a facility is misclassified as a PBS facility rather than an MOSF then they will not be paying license fees, DEC believes OSC’s observation is overstated for the following reasons: 1) OSC’s observation derived from a targeted sample of PBS facilities based on specific risk factors; 2) the four facilities identified were out of a total population of approximately 38,000; 3) the facilities in question are contiguous to one another which leads to confusion as to whether they should be combined for capacity purposes; and 4) it’s unknown whether any of the petroleum stored at the four facilities would be subject to license fees and surcharges. Furthermore, the question as to whether these facilities should be licensed as MOSFs was raised by the Department prior to the audit.

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Page 7, Last Paragraph – “Overall, reports filed by these sampled facilities included significant overreporting of barrels received and minor underreporting of barrels subject to fees and surcharges. Overreporting occurred for various reasons, including simple conversion errors, such as when a facility reported quantities in gallons rather than barrels; or the reporting of non-petroleum products, which are not subject to fees and surcharges. Additionally, some facilities improperly calculated the number of barrels they were required to report or applied transshipment credits incorrectly. The net impact of these discrepancies was relatively minor (about \$15,500 in lost revenue). However, the overall potential for inaccurate reporting is much higher, since the 11 facilities only accounted for about 15 percent of the total barrels reported by all MOSFs.”

DEC Comment:

As earlier indicated, this was a targeted sample of high risk facilities based on specific risk factors. Therefore, the sample selected is not a reliable indicator for the potential for inaccurate reporting of barrels received for all MOSFs. In addition, OSC’s sample would not prove reliable in approximating the aggregate amount of lost revenue.

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Page 8, Paragraph 1, Sentence 2 – “Additionally, Department data showed some of the facilities were inactive, and therefore should not be submitting Reports.”

DEC Comment:

To clarify, a facility may be “inactive” but still required to submit fee reports if they have not completed all of the requirements for final facility closure.

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Comment
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Page 9, Paragraph 3, Sentence 4 - “To date, no efforts have been made to include verification of any capacity or reporting issues which could impact the number of barrels subject to fees and surcharges.”

DEC Comment:

It is incorrect to state that no efforts have been made to verify capacities. DEC inspection forms explicitly include the verification of registration data, including tank capacities (the PBS inspection form is available on DEC's public website at http://www.dec.ny.gov/docs/remediation_hudson_pdf/pbsinspfrm.pdf). That being said, for MOSFs, fee and surcharge calculations are based on the amounts first transferred (imported) into a facility from out-of-state, not on tank capacity. Therefore, tank capacity verifications cannot confirm the accuracy of fee and surcharge amounts reported by MOSFs on the MPLFR.

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Comment
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As a result of OSC's audit, DEC's Bureau of Revenue Accounting (Revenue Accounting) is now requesting that MOSF license holders provide documentation to support their MPLFR submissions. As of May 2015, supporting documentation has been requested on a test basis to verify the accuracy of reported information.

Page 9, Last Paragraph, Sentence 1 - *"We were able to identify many of the reporting, registration, and licensing issues discussed in previous sections of this report by analyzing data the Department already maintains about each storage facility."*

DEC Comment:

To clarify, the accuracy of reported facility data and registration status cannot be verified by data analysis alone. DEC would have to conduct site inspections of facilities where data analysis indicated an increased risk of potential reporting problems. DEC has agreed to use readily available data analysis tools to identify facilities more at risk for being improperly registered. The results of DEC's analysis will determine if additional site inspections are needed to substantiate registration or license issues. Monitoring activities will be performed to the extent available resources allow.

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Comment
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Page 10, Paragraph 1, Sentence 5 - *"For example, during our facility visits we found the actual storage tank design capacities differed from the Department's records for 2 of 11 MOSFs and 4 of 7 PBS facilities."*

DEC Comment:

Regarding the first of the two MOSFs, DEC has determined that the facility in question was in the process of modifying their tanks to include new bottoms resulting in the reduction in capacity but the new capacities had not yet been added to the database. Also, the discrepancies should be put in perspective by noting these tanks are very large, and that the discrepancies are small relative to tank size (i.e., 5 to 7 percent of tank capacity). Stating the discrepancies in gallons without including the percentage or total tank capacity leaves out the context needed to understand the observation. Regarding the second MOSF, it appears that the tank observed was a closed/unregulated tank and not an active tank. The four PBS facilities were already under investigation by DEC prior to the commencement of the audit. The capacity discrepancies at the fourth PBS facility were small (less than 1 percent), and will be reviewed at the next scheduled inspection.

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Comment
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3) Comments on Recommendations

The following are DEC's responses to recommendations provided in the draft report:

Recommendation 1 – Implement formal procedures to monitor the accuracy of reported petroleum activity, fee collection, and general facility information. Such activities may include, but not be limited to, periodic analyses to identify indications of inaccurate reporting or operations.

***Department Response** – DEC generally agrees with this recommendation. In addition to existing monitoring activities which include periodic site inspections and the review of key data in applications, DEC will use readily available data analysis tools to identify facilities more at risk for being improperly registered (i.e., PBS facilities with a total storage capacity slightly below 400,000 gallons, etc.). The results of DEC's analysis will determine if additional site inspections are needed to substantiate facility registration or license issues.*

To verify the accuracy of barrels of petroleum first transferred (imported) from out-of-state and license fees and surcharges reported on MPLFRs, DEC is requesting documentation from MOSFs on a sample basis. Revenue Accounting in our Division of Management and Budget Services is handling all requests for supporting documentation and corresponding reviews to help ensure verifications are performed timely and that facilities are consistently notified of these verifications. Revenue Accounting will work with DEC's Division of Environmental Remediation (DER) to obtain any additional information needed to confirm reported amounts. DEC monitoring activities will be performed to the extent available resources allow.

Recommendation 2 – Follow-up on the licensing status of the PBS facilities we identified as potentially misclassified.

***Department Response** – DEC was already evaluating these facilities prior to the commencement of the audit. Based on that evaluation, DEC, through the Office of General Counsel (OGC), is addressing these facilities with the owners/operators.*

Regarding this particular matter, the facilities in question are contiguous to one another which leads to confusion as to whether they should be combined for capacity purposes. For complicated ownership issues such as this and other legal matters that are unclear, DER consults with OGC to determine facility status. If a legal review by OGC concludes that a facility is improperly registered, a facility will be reclassified and, if appropriate, assessed penalties and fines.

Recommendation 3 – Provide guidance to licensees and registrants to clarify how to correctly report petroleum activities and revenues due to the Fund.

***Department Response** – DEC will develop and post additional guidance on its public website to help ensure MOSF petroleum amounts and license fees and surcharges are correctly reported. Reporting guidance on how to properly complete MPLFRs is provided to MOSFs. This guidance is located on the reverse side of the MPLFR and identifies the information that is to be included on each line of the report, the calculations*

that need to be performed, and the columns where the amounts should be reported. PBS facilities pay registration fees on a 5-year renewal cycle and, unlike MOSFs, are not subject to license fees and surcharges based on the amounts first transferred (imported) into a facility from out-of-state.

Recommendation 4 – Implement formal steps to share petroleum facility information among staff responsible for monitoring petroleum storage facilities and collecting revenues due to the Fund.

***Department Response** – DEC agrees with this recommendation and will be taking actions to ensure information is shared among staff responsible for monitoring storage facilities and collecting revenues due to the Fund. Such actions include: 1) providing Revenue Accounting greater access to DEC's Unified Information System (UIS) to obtain real-time updates of facility information; 2) requesting that the Office of Information Technology Services develop UIS reports that will assist Revenue Accounting in identifying active and inactive MOSFs required to report monthly; 3) requiring MOSF inspectors to report matters to DER's Registration and Permits Section that could have a potential fee implication; and 4) developing procedures whereby if Revenue Accounting receives reports of license fees being paid by facilities that are listed in the database as closed/inactive, a request to perform a follow-up field inspection will be sent to DER.*

State Comptroller's Comments

1. Consistent with professional auditing standards, we used a risk-based sample of higher-risk facilities to demonstrate how the Department could benefit from data analysis to more effectively identify facilities for further monitoring. The examples we cite illustrate the types of problems that officials could readily identify for targeted testing to more efficiently utilize limited resources. Our intent was not to determine the overall error rates in the facility population, and our report makes no such estimate. Further, because we did not perform field tests at all of the facilities which our data analysis identified as higher risk, we believe it is likely that additional facilities have similar problems and deficiencies.
2. Our report does not state that "DEC inspections do not assess the accuracy of tank capacities." Nor does our report state that "no efforts have been made to verify capacities." Rather, our report notes that the inspections are primarily safety-oriented. Moreover, our tests showed the tank capacity information was not always accurate in the Department's database. Thus, inspections either did not determine the correct tank capacities or, if they did, the database was not updated with the correct information derived from the inspections.
3. We amended the final report to note the correct date that new license fee rates take effect.
4. We acknowledge that the Department has yet to determine whether these facilities are actually misclassified or whether any of the petroleum products stored there would be subject to license fees and surcharges. In fact, on page 9 of our report, we note that when we brought the issue to their attention in April 2015, officials indicated they had been aware of the situation since the prior year, but had yet to evaluate the sites due to other program priorities. We believe officials need to prioritize such evaluations and determinations.
5. We agree. As noted in the Audit Scope and Methodology section of our report, we also performed site visits to facilities, reviewed relevant records, and interviewed facility officials to make our determinations. Improved data analysis would simply allow the Department to target its own limited resources to the areas of greatest risk.