New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor

Department of Environmental Protection
Selected Special Revenue Funds

July 1, 2005 to March 31, 2007

Richard L. Fair
State Auditor
The Honorable Jon S. Corzine
Governor of New Jersey

The Honorable Richard J. Codey
President of the Senate

The Honorable Joseph J. Roberts, Jr.
Speaker of the General Assembly

Mr. Albert Porroni
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of Environmental Protection, Selected Special Revenue Funds for the period of July 1, 2005 to March 31, 2007. If you would like a personal briefing, please call me at (609) 292-3700.

Stephen M. Eells
Assistant State Auditor
July 26, 2007
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Department of Environmental Protection
Selected Special Revenue Funds

Scope

We have completed an audit of the Department of Environmental Protection, Selected Special Revenue Funds for the period July 1, 2005 to March 31, 2007. The audit included financial activities accounted for in the state’s General Fund and the following 11 non-major governmental funds: Beaches and Harbor Fund; 2003 Dam, Lake and Stream Project Revolving Loan Fund; 2003 Dam, Lake, Stream and Flood Control Project Fund; 1992 Dam Restoration and Clean Waters Trust Fund; Dredging and Containment Facility Fund; Emergency Flood Control Fund; Emergency Services Fund; 1996 Lake Restoration Fund; Pollution Prevention Fund; Shore Protection Fund; and Worker and Community Right to Know Fund.

The primary objectives of these funds are to maintain, restore, and protect beaches, harbors, shores, ports, dams, lakes, and streams. Other fund objectives are to provide emergency assistance and to maintain an awareness of the locations of environmental hazardous substances throughout the state. During fiscal year 2006, funding for these operations totaled $34 million. Typical funding sources include bond proceeds, state appropriations, assessments, investment earnings, and transfers from other funds. Fiscal year 2006 expenditures totaled $42 million and consisted of grants, state projects, emergency assistance, and administrative costs. In addition, loan payments during fiscal year 2006 totaled $2 million. It should be noted that these amounts may vary from year to year based upon the level of activity.

Objectives

The objectives of our audit were to determine whether financial transactions and balances were related to the funds, were appropriate per enabling legislation, were reasonable, and were recorded properly in the accounting systems. We also tested for resolution of a significant condition noted in

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

**Methodology**

Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the Office of Management and Budget, and policies of the department. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of financial transactions. We reviewed financial trends and interviewed department personnel to obtain an understanding of the programs and internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Transactions were judgmentally selected for testing.

To ascertain the status of the finding included in our prior report, we identified corrective action, if any, taken by the department and walked through the system to determine if the corrective action was effective.

**Conclusions**

We found that the financial transactions and balances included in our testing were related to the funds, were appropriate per enabling legislation, were reasonable, and were recorded properly in the accounting systems. In making this determination, we noted certain matters of noncompliance with laws and regulations along with opportunities for
revenue enhancement meriting management's attention. We also found that the department has not resolved the significant issue noted in our prior report involving a backlog of dam inspections. This issue has been updated in this report.
Worker and Community Right to Know

The Worker and Community Right to Know Act was enacted in 1983 in order to make citizens aware of hazardous substances in their environment which pose a growing threat to public health, safety, and welfare. The act was also established to inform not only the state but also local health, fire, police, and safety officials of the identity, characteristics, and quantities of hazardous substances used and stored in communities within their jurisdiction in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and regulations. In today’s world, potential acts of terrorism magnify the importance of this information.

According to New Jersey Administrative Code (N.J.A.C.) 7:1G-3.1(a), businesses shall complete and submit to the Department of Environmental Protection a Community Right to Know (CRTK) Survey for each facility that meets or exceeds specific thresholds of environmental hazardous substances present during the reporting period. In accordance with N.J.A.C. 7:1G-5.1(a), the survey shall be submitted to the department by March 1 of the year following the reporting year. A copy shall also be submitted to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located.

Failure to complete and submit a CRTK Survey to the department may result in a penalty of $1,000 for each violation. The department may assess an additional penalty for each day that the violation continues in an amount not to exceed $1,000 per day. Failure to submit information to the county and local establishments may result in a penalty of $500 for each violation and an additional penalty for each day the violation
continues in an amount not to exceed $100 per day.

We analyzed the Facilities and Chemical Inventories Tracking System (FACITS) database which records the issuance of CRTK Surveys and the submission of these surveys from businesses that maintain environmental hazardous substances. Our analysis as of February 2007 determined that 5,720 of the 25,859 surveys issued for calendar year 2004, which were due back to the department by March 1, 2005, had still not been submitted. In the succeeding year, 4,461 of the 15,121 surveys due back by March 1, 2006 had still not been submitted. According to the Office of Pollution Prevention and Right to Know, although surveys are to be submitted annually, businesses that do not submit their survey for two consecutive years receive a Notice of Violation. This notice provides a description of the violation and states that it does not preclude the State of New Jersey from initiating administrative or judicial enforcement action, or from assessing penalties. However, we were informed by management that staff constraints have limited the number of administrative orders issued to these violators. Of 325 administrative orders issued in 2005, only $20,950 has been collected as of February 2007. If a $1,000 penalty was imposed upon the 5,720 violators of calendar year 2004 and the 4,461 violators of calendar year 2005, the state could potentially collect $10 million in fines. More importantly, the imposition of these fines could greatly increase compliance with these reporting requirements.

We also found that the surveys were frequently not submitted to local officials. It is important that a municipality be aware of environmental hazardous substances within their community. We selected ten municipalities from ten different counties and determined that CRTK Surveys for calendar year 2005 were issued to 426 businesses that were located in these towns. As of February 2007, 23 percent of the surveys were not
completed and returned to the department and 48 percent had still not been submitted to the appropriate local authorities. Although the department has implemented a pilot program with six counties to investigate businesses that failed to submit their surveys to the state, there is currently no procedure that determines which businesses have not submitted their surveys to the proper local authorities. It is therefore evident that there is no imposition of fines in these cases.

In addition to receiving the surveys, it is also important that the type and amount of any hazardous substance be accurately reported. In order to confirm the propriety of these surveys, N.J.A.C. 7:1G-1.5 states that the department shall have the authority to enter and perform inspections of any business premises. Management has indicated that inspections are limited due to staff constraints. We analyzed the results of 106 random inspections performed by the department. Thirty-two of these businesses had hazardous substances exceeding the allowable threshold, although their surveys reported hazardous substances were below the threshold or did not exist at all. The inaccuracy of surveys expands upon the problem of those which are not submitted.

New Jersey Statutes Annotated 34:5A-18 established a Right to Know Advisory Council which had the power to review any aspects of this program and provide recommendations to the department. Management stated this council ceased to function in the early 1990s. The oversight of such a council may provide assistance in correcting program weaknesses.

**Recommendation**

We recommend:

- the department impose fines on all businesses that violate requirements for the timely submission and accuracy of CRTK Surveys;
- the department determine the need for additional staff and enhance its monitoring efforts, including additional
inspections; and
• the Right to Know Advisory Council be recreated in order to oversee operations.

Dam Inspections

Backlogs of dam inspections pose a public safety risk.

In order to prevent or reduce the risk of property damage and loss of life, dams throughout the state are to be periodically inspected in accordance with N.J.S.A. 58:4-8.2. The Bureau of Dam Safety and Flood Control (bureau) is responsible for monitoring the inspections that dam owners are required to have performed by licensed New Jersey professional engineers. The timeframe which owners must adhere to depends upon the dam classifications as defined under N.J.A.C. 7:20-1.8. The dams referred to as High Hazard or Significant Hazard require regular inspections at least every two years.

In order to determine the current status of the inspections by owners, we analyzed the database maintained by the bureau as of January 4, 2007. Our test disclosed that 70 percent of the state’s 1,713 dams are not in compliance with the inspection requirements outlined in N.J.A.C. 7:20-1.11. A number of these dams are classified as High Hazard or Significant Hazard as reflected in the following chart.

<table>
<thead>
<tr>
<th>Dam Classification</th>
<th>Inspection Period</th>
<th>Total Number of Dams</th>
<th>Inspections not Up-to-date</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Hazard – Large</td>
<td>1 year</td>
<td>33</td>
<td>16</td>
<td>48.48</td>
</tr>
<tr>
<td>High Hazard</td>
<td>2 years</td>
<td>172</td>
<td>77</td>
<td>44.77</td>
</tr>
<tr>
<td>Significant Hazard</td>
<td>2 years</td>
<td>362</td>
<td>243</td>
<td>67.13</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>567</td>
<td>336</td>
<td>59.26</td>
</tr>
</tbody>
</table>

The following chart summarizes the inspection status of those dams included in the previous chart that are owned by the Department of Environmental Protection and other state agencies and authorities.
Dams Owned by the State

<table>
<thead>
<tr>
<th>Dam Classification</th>
<th>Inspection Period</th>
<th>Total Number of Dams</th>
<th>Inspections not Up-to-date</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Hazard - Large</td>
<td>1 year</td>
<td>18</td>
<td>11</td>
<td>61.11</td>
</tr>
<tr>
<td>High Hazard</td>
<td>2 years</td>
<td>18</td>
<td>10</td>
<td>55.56</td>
</tr>
<tr>
<td>Significant Hazard</td>
<td>2 years</td>
<td>35</td>
<td>25</td>
<td>71.43</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>71</td>
<td>46</td>
<td>64.79</td>
</tr>
</tbody>
</table>

Based on these percentages, the department has not resolved the finding noted in our prior audit report issued on April 30, 2004. The percentage of dams not in compliance with inspection requirements has risen from 58 to 70 percent. In regards to those classified as High Hazard or Significant Hazard, the percentage of dams not in compliance has risen from 48 to 59 percent. Although we were informed that staff constraints contribute to the backlog of inspections, it was stated that enforcement authority should be available by the end of calendar year 2007 which will allow the department to issue administrative orders with a $5,000 penalty to those dam owners that do not comply with the inspection requirements. While this may improve the timeliness of inspections of private dams, steps need to be taken to ensure compliance for state-owned dams.

The bureau is currently engaged in the restoration and repair of dams through the Dam, Lake, Stream, Flood Control, Water Resources, and Wastewater Treatment Project Bond Act of 2003. This act, which does not fund inspections, has provided $15 million to finance the restoration and repair of 24 state-owned dams and $95 million for loans to public and private dam owners for the restoration and repair of 77 dams. In addition, the bureau has identified over 200 dams in need of repair which cannot be currently funded although they are classified as High Hazard or Significant Hazard. Seven million dollars in loan repayments are available from the 1992 Dam Restoration and Clean Waters Trust
Fund and the bureau anticipates that this will only fund repairs to 10 dams.

**Recommendation**

We recommend the department utilize enforcement actions necessary to ensure that dam owners comply with inspection requirements. Efforts should also be made to ensure that state-owned dams comply with inspection requirements.
July 20, 2007

Mr. Richard L. Fair  
State Auditor  
Office of the State Auditor  
Office of Legislative Services  
125 South Warren Street  
Trenton, New Jersey 08625-0067  

Dear Mr. Fair:  

Thank you for the opportunity to review and respond to the draft audit report regarding the Department of Environmental Protection, Selected Special Revenue Funds for the period of July 1, 2005 to March 31, 2007. We are pleased to note that the audit concludes that the financial transactions and balances tested were related to various funds, were appropriate as per enabling legislation and were both reasonable and properly recorded in the State’s accounting system.  

The audit report also noted certain matters which merit Management’s attention. We hereby offer information on current program status, as well as our planned corrective actions to address these issues and their corresponding recommendations.  

Worker and Community Right to Know  

Recommendation  

The Department imposes fines on all businesses that violate requirements for the timely submission and accuracy of CRTK Surveys.  

Response  

As a result of recent changes to the reporting requirements and the way CRTK Surveys are processed, the CRTK program will, by the end of calendar year 2007, issue Notices of Violation (NOVs) to all reporting year 2006 non-responders.  

The majority of companies regulated under the Department's Community Right to Know (CRTK) program are small businesses. Typically, they often lack the sophistication and resources to comply with Department requirements and the imposition of a fine represents a financial hardship. Recognizing this fact, the CRTK program has
traditionally afforded businesses an opportunity to comply with the CRTK reporting requirements before issuing penalties. The program does this by issuing NOVs that affords non-compliers a "grace period", typically thirty days, to comply with the CRTK reporting requirements, whether it be to submit the CRTK Survey or provide clarify information. Due to limited resources, the CRTK program had been forced to limit NOVs to those businesses that did not submit a CRTK Survey for two consecutive years.

An analysis of the CRTK program found that from 1994 to 1996 the compliance rate for submittal of the CRTK Survey was in the 90% range. In 1997, the first year the program began issuing NOVs to two-year non-responders the compliance rate fell to 81%. In subsequent years the compliance rate has been around 70% to 80%.

Due to recent improvements in the processing of CRTK Surveys, and a rule change exempting businesses that do not use any hazardous substance or use hazardous substances below the reporting threshold, from having to submit an annual CRTK Survey, the CRTK program will, by the end of calendar year 2007, issue NOVs to all CRTK non-responders. We believe this will help get the compliance rate back to the 90% range.

It should also be noted that for any given year, a good percentage of the businesses that do not submit the CRTK Survey are found to have gone out of business during the reporting year or are exempt from CRTK reporting. Additionally, because the regulated universe is predominately small businesses, a good deal of resources is expended when trying to collect penalties.

**Recommendation**

The Department determines the need for additional staff and enhance its monitoring efforts, including additional inspections.

**Response**

The CRTK program has taken steps, and will commit to additional steps, to ensure that relevant information is available to local agencies. CRTK staff meets with the CRTK County Lead Agents and provides a list of those businesses that have received and returned the CRTK Survey. The CRTK program will commit to sending this information, via computer disk, to each Local Emergency Planning Committee (LEPC) contact. Additionally, since September 11, 2001, the State has consolidated homeland security responsibilities to the Office of Homeland Security and Preparedness and the State Police. Accordingly, the CRTK program has been involved in the development of the homeland security database, a comprehensive computer system that enables the State Police to access various databases. This computer system housed in the Regional Operations Intelligence Center (ROIC), New Jersey's state-of-the-art emergency management facility, will allow the State Police to access the hazardous substance information collected under the CRTK program.
The CRTK program has instituted a pilot program whereby county inspector's conduct CRTK inspections on a number of businesses, determined by DEP, that have not submitted the CRTK Survey. Currently there are six counties participating in this pilot and each conducts approximately 50 inspections.

Based on the latest data available, for the fiscal year ending June 30, 2006, there was a balance in the RTK fund of over $2.6 million, which is maintained by the New Jersey Department of Labor. The Department would like to have an additional annual appropriation to be able to hire and maintain two additional CRTK inspectors to help achieve a 90% compliance rate.

**Recommendation**

The Right to Know Advisory Council be recreated in order to oversee operations.

**Response**

The Department of Health and Senior Services (DHSS) and the Department of Environmental Protection (DEP) conduct an annual outreach event to stakeholders, called the RTK Forum. Feedback received indicates that there is not an outcry from stakeholders on the need for the RTK Advisory Council.

However, should Governor Corzine, with the advice and consent of the Senate, appoint the members we will be happy to work with them to ensure the success of the Council.

**Dam Inspections**

**Recommendation**

The Department utilize enforcement actions necessary to insure that dam owners comply with inspection requirements.

**Response**

With the passage of the amended Safe Dam Act and with the anticipated adoption of the updated rules by January 2008, Office of Engineering and Construction (OEC) will be prepared to proceed with its enhanced enforcement program.

In addition, the following comments are offered:

1. Please note that while the report focuses exclusively on inspections, this activity is but a part of OEC efforts to ensure the safety of New Jersey’s dams. OEC is also currently involved with 30 enforcement actions. For example, the breaching and/or water level reduction at nine dams have eliminated immediate safety concerns until the respective structures are repaired or decommissioned. The ordered lowering lake water surface elevations and the breaching of unsafe dams
will continue where owners are found to be unwilling to take required corrective action. With these actions, we are sending a clear message that unsafe dams will not be tolerated.

2. Below is more recent and definitive data which should supersede the charts within the report. Please note that an additional column labeled “Inspections not up to date with 1 year grace” has been added for special cases where the dam is known to be safe but the owner’s engineer is anticipating or completing ongoing studies, surveys, analysis or construction. Adding this category more accurately reflects inspection annual activities.

### All Dams

<table>
<thead>
<tr>
<th>Dam Class</th>
<th>Inspection period</th>
<th>Total #</th>
<th>Inspections not up to date as of today</th>
<th>Percentage</th>
<th>Inspections not up to date with 1 yr grace</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-Large</td>
<td>1 Yr</td>
<td>33</td>
<td>8</td>
<td>24.2%</td>
<td>2</td>
<td>6%</td>
</tr>
<tr>
<td>High</td>
<td>2 Yr</td>
<td>180</td>
<td>63</td>
<td>35.0%</td>
<td>22</td>
<td>12%</td>
</tr>
<tr>
<td>Significant</td>
<td>2 Yr</td>
<td>354</td>
<td>188</td>
<td>53.1%</td>
<td>106</td>
<td>30%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>567</td>
<td>259</td>
<td>45.7%</td>
<td>130</td>
<td>23%</td>
</tr>
</tbody>
</table>

### DEP Owned Dams

<table>
<thead>
<tr>
<th>Dam Class</th>
<th>Inspection period</th>
<th>Total #</th>
<th>Inspections not up to date as of today</th>
<th>Percentage</th>
<th>Inspections not up to date with 1 yr grace</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-Large</td>
<td>1 Yr</td>
<td>3</td>
<td>3</td>
<td>100.0%</td>
<td>1</td>
<td>33%</td>
</tr>
<tr>
<td>High</td>
<td>2 Yr</td>
<td>12</td>
<td>9</td>
<td>75.0%</td>
<td>3</td>
<td>25%</td>
</tr>
<tr>
<td>Significant</td>
<td>2 Yr</td>
<td>17</td>
<td>9</td>
<td>52.9%</td>
<td>8</td>
<td>47%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>32</td>
<td>21</td>
<td>65.6%</td>
<td>12</td>
<td>38%</td>
</tr>
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</table>

### All State Owned Dams

<table>
<thead>
<tr>
<th>Dam Class</th>
<th>Inspection period</th>
<th>Total #</th>
<th>Inspections not up to date as of today</th>
<th>Percentage</th>
<th>Inspections not up to date with 1 yr grace</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-Large</td>
<td>1 Yr</td>
<td>18</td>
<td>3</td>
<td>16.7%</td>
<td>1</td>
<td>6%</td>
</tr>
<tr>
<td>High</td>
<td>2 Yr</td>
<td>17</td>
<td>11</td>
<td>64.7%</td>
<td>3</td>
<td>18%</td>
</tr>
<tr>
<td>Significant</td>
<td>2 Yr</td>
<td>37</td>
<td>22</td>
<td>59.5%</td>
<td>15</td>
<td>41%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>72</td>
<td>36</td>
<td>50.0%</td>
<td>19</td>
<td>26%</td>
</tr>
</tbody>
</table>
Recommendation

Efforts should also be made to ensure that State-owned dams comply with inspection requirements.

Response

Due to limited budgets of both the Division of Fish & Wildlife and the Division of Parks and Forestry, it is difficult for these divisions to adequately inspect their dams in accordance with the Safe Dam Act and the Dam Safety Standards. To assist in this difficult situation, OEC has agreed to conduct the required inspections on a periodic basis of the most critical dams. This decreases the time and resources available to conduct OEC’s regulatory duties. Also please note that at this time OEC’s Bureau of Dam Safety and Flood Control has three vacant full time engineering positions.

In closing, the Department accepts the findings and recommendations presented in the report and will strive to comply with those recommendations in order to safeguard the State’s assets and interests.

Sincerely,

Lisa P. Jackson
Commissioner