

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF MANAGEMENT AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Processes of the Environmental Control Board and the Department of Finance to Collect Fines for Violations Issued by the Department of Buildings**

*MD08-071A*

**January 22, 2009**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the adequacy of Environmental Control Board's (ECB's) and Department of Finance's (DOF's) collection processes for ECB fines for violations issued by Department of Buildings (DOB).

DOB issues an ECB Notice of Violation (NOV) when a building does not comply with the building code or the City's Zoning Resolution. ECB is an administrative tribunal that adjudicates cases involving violations of New York City's quality-of-life laws, including those NOV's issued by DOB. DOF is the collection agency for the City and is responsible for collecting ECB judgments. Audits such as this provide a means of ensuring that City agencies make adequate efforts to collect monies due the City.

The results of our audit, which are presented in this report, have been discussed with ECB and DOF officials, and their comments have been considered in preparing this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "Will C. Thompson, Jr.", written over a horizontal line.

William C. Thompson, Jr.

WCT/ec

**Report:** MD08-071A  
**Filed:** January 22, 2009

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*The City of New York  
Office of the Comptroller  
Bureau of Management Audit*

**Audit Report on the  
Processes of the Environmental Control Board and the  
Department of Finance to Collect Fines for Violations Issued  
by the Department of Buildings**

**MD08-071A**

**AUDIT REPORT IN BRIEF**

The audit examined the adequacy of the Environmental Control Board's (ECB) and the Department of Finance's (DOF) collection processes for ECB-imposed fines resulting from violations issued by the Department of Buildings (DOB).

According to the Mayor's Management Report, in Fiscal Year 2008, DOB issued 63,575 ECB Notices of Violation (NOVs) for failure to comply with the building code or the City's Zoning Resolution.<sup>1</sup> DOB can also issue building code violations that are not adjudicated by ECB. ECB is an administrative tribunal that adjudicates cases involving violations of New York City's quality-of-life laws, including those NOVs issued by DOB. ECB can impose fines on respondents (the person or business against whom the violation is issued) under two circumstances—(1) when respondents fail to appear for the scheduled hearing at ECB causing them to be in default and liable for a default penalty, and (2) when respondents attend a hearing, are found guilty ("in-violation") by an ECB Administrative Law Judge, and receive a penalty. If ECB's attempts to obtain payment from respondents are unsuccessful, the cases are filed, or "docketed," in the New York State Supreme Court.<sup>2</sup> ECB then is to send a list of all docketed cases electronically to DOF for collection.

DOF is the collection agency for the City and is responsible for collecting default and in-violation ECB judgments. DOF and ECB have a Memorandum of Understanding (MOU) that sets forth the agreement between the agencies for the collection of delinquent ECB violations.

As of October 2008, DOF reported that its caseload included 75,037 violations issued by DOB with ECB fines totaling approximately \$202 million.

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<sup>1</sup> The Zoning Resolution establishes zoning districts within the City and sets forth the regulations governing land use and development.

<sup>2</sup> Docketing cases allows the City to place a lien on the respondent's real property.

## **Audit Findings and Conclusions**

Although ECB is properly sending notification letters to respondents and is properly docketing the judgments within its established timeline, ECB did not forward cases to DOF for a period of more than 19 months. As a result, DOF's collection efforts were severely limited by ECB's inaction.

Nevertheless, DOF should improve its recordkeeping and collection process for ECB fines resulting from violations issued by DOB (ECB-DOB violations). DOF has made minimal efforts to collect ECB-DOB violation fines from our sampled respondents. As a result, the sampled respondents are still conducting business without fully correcting the violations or paying the fines due. As of May 2008, the sampled respondents had 394 unresolved violations as well as unpaid fines for 1,221 violations totaling approximately \$4 million. These fines remained unpaid for an average of 1,751 days from the dates the judgments for these cases were docketed (filed with the court) through May 1, 2008.

DOF also has no formal procedures, such as establishing a dollar-value threshold, to identify those respondents meriting additional collection efforts. Further, the procedures DOF does have are not always followed by DOF personnel. For example, initial attempts to contact respondents, including sending notification letters, are not always performed by DOF, partly because of inaccurate or incomplete information received from ECB's Adjudication Information Management System (AIMS). Sending a notification letter and making a telephone call (if a number is available) do not guarantee that a respondent will pay. However, in most instances, the letter and phone call are the only collection attempts that DOF makes. Therefore, by failing to perform these minimal steps, DOF is practically assured that it will collect no monies from these respondents. Moreover, DOF failed to use its contracted collection agency to aid in its efforts. Last, as DOF does not track the amounts of ECB-DOB violation fines it collects as compared with the total cases received for the same time period, it is unable to calculate its collection rate for these fines and is unable to determine the effectiveness of its collection activities.

## **Audit Recommendations**

Based on our findings, we make 17 recommendations, 6 of which are listed below.

DOF and ECB officials should:

- Consider legislative changes that would allow for additional enforcement capabilities to assist the agencies in their collection efforts. In addition, DOF and ECB officials should consider initiating a project with DOB whereby DOB would be able to deny new permits to respondents with open and outstanding violations.

DOF should:

- Establish formal procedures and criteria to identify and select cases for additional collection attempts.

- Ensure that it adheres to its own internal collection procedures and documents these efforts.
- Contact ECB to obtain prior payment information in an attempt to identify bank accounts of respondents in order to send execution letters to seize assets.
- Use the contract with its collection agency in order to assist in its fine collection efforts for ECB-DOB violations.
- Track ECB-DOB violation fine payments that result specifically from its collection efforts to determine the collection rate so as to monitor the effectiveness of DOF collection procedures.

### **Agency Response**

In their response, ECB officials agreed with the three recommendations addressed to ECB. In DOF's response, although DOF officials expressed their overall disappointment with the audit, they agreed with or have stated that they have implemented 13 of the 16 recommendations addressed to DOF. They disagreed with the remaining 3 recommendations.

## INTRODUCTION

### Background

The Environmental Control Board (ECB) is an administrative tribunal that adjudicates cases involving violations of New York City's quality-of-life laws and acts as an independent decision-maker. When a person, business, or other organization appears to have violated one of the City's quality-of-life laws, an authorized City employee issues the offender a written Notice of Violation (NOV). The City has approximately 20 agencies that can issue such NOV's. These City agencies include the Departments of Buildings (DOB), Sanitation, and Transportation, and the Police and Fire Departments. (The focus of this audit was ECB-DOB violations.)

DOB issues an ECB NOV when a building does not comply with the building code or the City's Zoning Resolution. DOB can also issue building code violations that are not adjudicated by ECB. An ECB NOV is the most common type of violation issued by DOB. According to the Mayor's Management Report, in Fiscal Year 2008, DOB issued 63,575 ECB NOV's. Penalties vary depending on the violation, ranging from \$80 for minor violations (such as failure to post an approved capacity sign) to \$10,000 for serious violations (such as an outdoor advertisement sign on display without a permit). Subsequently, ECB determines the amount of the monetary penalties and issues orders to correct violations when it determines the validity and severity of a violation through the adjudication process.

Once an NOV is written, the respondent (the person or business against whom the violation is issued) can resolve the NOV by (1) admitting to the violation, paying the penalty, and correcting the problem, or (2) disputing the violation and presenting a case at an ECB hearing. Fines can be imposed on respondents under two circumstances—(1) when respondents fail to appear for the scheduled hearing, causing them to be in default and liable for a default penalty imposed within five days after the scheduled hearing date, and (2) when respondents attend a hearing, are found guilty ("in-violation"), and receive a penalty. Respondents who appeal hearing decisions are required to pay the imposed penalty pending the review of the appeal.

After providing a forum for contesting the NOV's, ECB mails at least two request-for-payment (dunning) notices to the respondents. If ECB's attempts to obtain payment from respondents are unsuccessful, the cases are filed in the New York State Supreme Court at which point they are deemed "docketed." ECB then is to send a list of all docketed cases electronically to DOF for collection. All information regarding ECB violations and court cases is entered into the ECB computer system, the Adjudication Information Management System (AIMS).

DOF is the collection agency for the City. DOF became responsible for collecting ECB judgments as of July 1996. DOF and ECB have a Memorandum of Understanding (MOU), dated January 17, 2002, which sets forth the agreement between the agencies for the collection of delinquent ECB violations. In its collection efforts, DOF does not segregate cases resulting from DOB-issued violations from those of other agencies. As of October 2008, DOF reported that its caseload included 75,037 ECB-DOB violations with fines totaling approximately \$202 million.

After DOF receives cases from ECB, the case data is transferred to DOF's Computer Assisted Collection System (CACS). According to DOF, its collection attempts should include: making two telephone calls (if a phone number can be found) and sending two dunning letters to respondents. The letters are automatically generated from CACS. DOF may also take some additional steps to attempt collection of the debt for certain cases—for example, a case in which the respondent accumulated a high dollar amount of fines or the case is considered to be high profile. For the selected cases, DOF creates a paper folder to contain documentation of its collection efforts and information retrieved about the respondent. DOF may also seize respondents' assets and may send cases to an outside collection agency for enforcement. When a new batch of cases is sent to the collection agency, the previous cases are recalled by DOF and no further actions are taken.

This audit was initiated in response to a request from various elected officials and housing groups. The request referred to a 2002 audit of the Department of Finance that our office conducted and expressed the concern that the inadequacy of fine collection efforts weakens the deterrent value of fine enforcement by encouraging building owners to correct violations and maintain the safety of their properties.

The prior audit (*Audit Report on the Department of Finance's Collection of Penalties Imposed in Environmental Control Board Cases*, MG02-118A, issued June 25, 2002) reported that the DOF collection efforts for ECB cases have been insufficient as follows:

- DOF made minimal collection efforts on a large percentage of ECB cases.
- DOF did not award a contract to a private agency specifically for the collection of penalties imposed in older ECB cases.
- The data in DOF's CACS system was not consistently updated to include case status changes noted by ECB in its AIMS system.
- DOF did not consistently mail the required dunning notices to respondents.

### **Objective**

The objective of this audit was to determine the adequacy of ECB's and DOF's collection processes for ECB fines for violations issued by DOB.

### **Scope and Methodology**

The primary scope of the audit covered the ECB-DOB violations included in DOF's CACS database as of October 2007. The database included some 52,000 violations with fines totaling about \$132 million for the period December 1983 through October 2005. In addition, we reviewed violations listed in ECB's AIMS database covering the period December 1983 through October 2007.



To obtain an understanding of the policies, procedures, and regulations governing building code fines and the collection procedure, we reviewed and used as criteria the ECB Procedure Manual and its *Enforcement Procedure Before the Environmental Control Board*, the *DOF Internal Collection Procedure for DOB Cases* (Internal Collection Procedure) and *High Level ECB Collection Workflow* (Workflow), §1404 of the New York City Charter, and the Memorandum of Understanding between ECB and DOF.

To obtain a general overview of ECB operations and its AIMS database, we interviewed the ECB Director of Operations and computer personnel and conducted a walk-through of ECB activities.

To obtain a general overview of DOF's collection operations of fines for ECB-DOB violations, we interviewed the Assistant Commissioner of the DOF Collections Division, the Manager of the Collections Division's Dunning Unit, and Director of Parking and Collection Systems. We also conducted a walk-through of DOF's ECB-DOB violation collection activities. The CACS database is administered by a consultant firm, CGI. To understand the computer system, we interviewed the Director of CGI and a consultant of CGI. In addition, to gain a general understanding of the legal issues involved in the collection process, we interviewed DOF's Deputy General Counsel and the Director of the Legal Department.

We received a listing of all ECB-DOB violations that were in the CACS database as of October 2007. In total, there were 52,376 violations with a total fine amount of \$131,953,237. To determine whether two dunning letters were sent to respondents by ECB and DOF, and whether two telephone calls were made to respondents by DOF, we judgmentally selected 100 violations from this population and reviewed the violation histories in AIMS and CACS.

In addition, we reviewed all 52,376 violations to determine whether any violations lacked an address in the address field (which could make collection efforts more difficult). We identified 4,257 violations that lacked an address in the address field and judgmentally selected and reviewed 50 of the 4,257 violations to determine whether CACS had notations that letters were sent, indicating that address searches had been performed.

We sorted this list of 52,376 violations by respondent name to determine the total number of violations and total fine amount for each respondent. We then sorted the listing of respondents in order of descending dollar value to identify those respondents who owe the City the highest amount in fines. It should be noted that respondents' names were listed in CACS with many spelling variations.<sup>3</sup> As a result, there is a possibility that not all spelling variations were identified and, therefore, not all violations were accurately included in our calculations.

We initially selected the two respondents that owed the City the highest amount of ECB-DOB violation fines and reviewed the efforts taken by DOF to collect these fines. These two respondents had a total of 191 violations and owed the City a total of \$745,370 in fines. Subsequently, we judgmentally selected an additional 23 respondents from the CACS database

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<sup>3</sup> A spelling variation of a respondent's name refers to a slight modification of the respondent's name. For example, if the name of a company is "ABC Corp.," a violation may be written to "A.B.C. Corp." or to "ABC Company."

that each owed the City more than \$100,000 in total fines, for a total amount due of \$3,815,080 resulting from a total of 1,230 violations. We later determined that although one respondent had a total of \$149,110 in fines listed in CACS, the actual balance due was only \$83,080. Nonetheless, we decided to keep this respondent in the sample. We reviewed the efforts made by DOF to collect these fines. In total, our sample consisted of 25 respondents having a total of 1,421 violations that owed the City approximately \$4.6 million, as of October 2007.

For each of the 25 sampled respondents, we requested case folders from DOF to determine whether any of the respondents were selected by DOF for further collection efforts. We reviewed the case folders, including comment sheets describing what actions, if any, were taken by DOF to collect from the respondents. We also reviewed the New York State Department of State Web site for each of the 25 sampled respondents to determine whether the respondents were active companies (from which collections may be obtained). In addition, we performed a Lexis Nexis search on the 25 sampled respondents to verify address information and identify assets.

To further identify potential assets we determined whether potential bank account information could be obtained. We first reviewed the AIMS transaction histories of violations for the 25 sampled respondents. For those respondents that were identified as making prior payments, we requested payment information from ECB.

We also reviewed DOB's Building Information System (BIS) to determine whether the 25 respondents had open ECB violations, which would indicate that potential health and safety problems had not been corrected. In addition, we reviewed all violations in BIS for our sample of 25 respondents to determine whether fines were paid and whether the violations were corrected subsequent to October 2007 (the month we received DOF's CACS database).

During Fiscal Year 2006, ECB dismissed 7,572 violations for various reasons. We reviewed the reasons for dismissals for all 7,572 cases dismissed by the Administrative Law Judges (ALJs) to determine whether any pattern existed (e.g., the same ALJ dismissing the violations of one particular respondent or an individual ALJ dismissing a number of violations for the same reason).

To determine the timeliness of the ECB hearing process, we randomly selected 144 cases of the 20,919 unpaid defaulted and in-violation cases (as of October 2007) with Fiscal Year 2006 issuance dates and reviewed their violation histories in AIMS. For those violations that were docketed in the Supreme Court more than 120 days from the decision date (the date the ECB ALJ's decision is recorded in AIMS), we determined whether the cases were docketed within the proper docketing quarter.<sup>4</sup>

The results of our tests, while not projectable to the entire population of ECB-DOB violations, provided a reasonable basis for us to determine the adequacy of ECB's and DOF's collection process for ECB fines for violations issued by DOB.

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<sup>4</sup> ECB docket cases during the first month of the following quarter. For example, cases that are ready to be docketed between January and March are docketed during April.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the City Comptroller's audit responsibilities as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with ECB and DOF officials during and at the conclusion of this audit. A preliminary draft report was sent to ECB and DOF officials and discussed at an exit conference held on September 12, 2008. On November 3, 2008, we submitted a draft report to these officials with a request for comments. We received a written response from ECB officials on November 19, 2008, and from DOF officials on December 2, 2008.

ECB officials agreed with the three recommendations addressed to ECB.

In DOF's response, although DOF officials expressed their overall disappointment with the audit, they agreed with or have stated that they have implemented 13 of the 16 recommendations addressed to DOF. They disagreed with the remaining 3 recommendations. DOF officials further stated that they had recognized many of the weaknesses identified in this report and were committed to addressing these challenges as part of the DOF information-technology conversion that was completed in January 2008.

However, we must express our disappointment with DOF's response. During the course of the audit, we made good faith efforts to inform DOF of our concerns and of the weaknesses identified during the audit. In fact, on April 8, 2008, upon completion of the fieldwork and three months after the completion of the DOF information-technology conversion, we met with ECB and DOF officials to update them on the results of our review and to discuss the overall findings of the audit. At that meeting, DOF officials stated that DOF had recognized and resolved the finding that docketed cases were not being forwarded in a timely manner, but, contrary to their later assertion, they did not mention having already identified and addressed any of the other audit findings. The April 8, 2008 meeting was one of the opportunities DOF officials had to refute our findings, to clarify misconceptions that we may have had, and to offer explanations or documentation supporting its claims, but they did not do so. In fact, the first time that DOF officials made the claim that the new conversion had addressed many of the audit findings was at the exit conference held on September 12, 2008. However, they still provided no details of the cited conditions that were supposedly addressed by the conversion, how the conversion corrected the conditions, nor evidence to support their assertions. Without documentary evidence to support DOF's claims, we were unable to determine whether our findings were adequately addressed.

The full text of the ECB and DOF responses are included as addenda to this report.

## **FINDINGS AND RECOMMENDATIONS**

Although ECB is properly sending notification letters to respondents and it is properly docketing the judgments within its established timeline, ECB did not forward cases to DOF for a period of more than 19 months. As a result, DOF's collection efforts were severely limited by ECB's inaction.

Nevertheless, DOF's recordkeeping and collection process for ECB-DOB violations needs to be improved. DOF has made minimal efforts to collect ECB-DOB violation fines from our sampled respondents. As a result, the respondents are still conducting business without fully correcting the violations or paying the fines due. As of May 2008, the sampled respondents had 394 unresolved violations as well as unpaid fines for 1,221 violations totaling approximately \$4 million. These fines remained unpaid for an average of 1,751 days from the dates the judgments for these cases were docketed (filed with the court) through May 1, 2008.

In addition, DOF has no formal procedures (such as establishing a dollar-value threshold) to identify those respondents meriting additional collection efforts. Further, the procedures DOF has are not always followed by DOF personnel. Initial attempts to contact respondents, including sending notification letters, are not always performed by DOF, partly because of inaccurate or incomplete information received from ECB's Adjudication Information Management System (AIMS). Sending a notification letter and making a telephone call (if a number is available) do not guarantee that a respondent will pay. However, in most instances, the letter and telephone call are the only collection attempts that DOF makes. Therefore, by failing to perform these minimal steps, DOF is practically assured that it will collect no monies from these respondents. Moreover, DOF failed to use its contracted collection agency to aid in its efforts. Last, as DOF does not track the amounts of ECB-DOB violation fines it collects as compared with the total cases received for the same time period, it is unable to calculate its collection rate for these fines and is unable to determine the effectiveness of its collection activities. By increasing its fine enforcement, DOF would deter individuals and businesses from continuing to violate the building code or Zoning Resolution without consequence.

These issues and others are discussed in more detail in the following sections of this report.

### **Inadequate Collection Efforts by DOF**

DOF has made minimal collection efforts to collect ECB fines from respondents. DOF's only collection attempt in most cases comprised sending two dunning letters (generated automatically from CACS). In some cases, DOF will make two telephone calls (if a telephone number is found) to the respondents. However, we determined that dunning letters were not sent for 23 percent of the sampled violations, and telephone calls were not made for 95 percent of the sampled violations. DOF officials informed us that certain cases may be selected for further pursuit if (1) the respondent has accumulated a high dollar amount of fines, (2) it is a high profile case, or (3) a special project is initiated. However, in those cases selected for further pursuit, DOF's internal collection procedures are not always followed.

## **Inadequate Initial Attempts to Contact Respondents**

DOF does not send dunning letters or make telephone calls to all respondents. For the 100 violations sampled, we determined that dunning letters were not sent to respondents for 23 violations, and telephone calls were not made for 95 violations. There were 23 violations in which respondents did not receive either a dunning letter or a telephone call. Dunning letters were, however, sent by ECB for all 100 violations in our sample.

We reviewed the 23 violations in CACS to determine whether empty address fields for these respondents were a possible reason the letters were not sent. Of the 23 cases in which dunning letters were not sent by DOF, CACS contained complete address information for 17. The remaining six cases in CACS lacked address information.

We reviewed AIMS for these six cases and determined that respondent addresses were also not present. We were informed by ECB's Director of Information Technology that ECB sends letters to all known addresses. If the respondent's address is not known, the letter will be sent to the address where the violation occurred.

DOF officials and CGI personnel<sup>5</sup> explained that the reason most of the 17 instances in which CACS did not generate a letter was because certain status codes assigned to cases do not have the automatic letter-generating function. For example, in 11 of these 17 instances in which letters were not sent, the cases were all entered in CACS as status code D93, which signifies that the case is deemed "uncollectible" because it is older than three years. However, according to the MOU, DOF is required to send dunning letters to all respondents upon receipt of the cases.

It is important that DOF send dunning letters for all violations regardless of the status codes, as the letters represent DOF's initial attempt to contact respondents in hopes that they will pay the fine. Unless a respondent is selected for further collection attempts, other than the telephone call (if a telephone number is found), the dunning letter constitutes DOF's only collection attempt. The prior 2002 Comptroller's Office report, *Audit Report on the Department of Finance's Collection of Penalties Imposed in Environmental Control Board Cases*, also cited DOF for not always sending the required dunning letters.

We reviewed another 50 violations of the 4,257 violations in CACS that had empty address fields and determined that dunning letters were not sent to the respondents for 31 (62%) of them. We asked DOF officials whether they conducted address searches for these 31 respondents and what steps they took to send letters to the remaining 19. They responded that no research was conducted regarding these 31 respondents, nor is any research conducted for any case when address information is incomplete or lacking. As such, there is little likelihood that DOF would be able to collect from these respondents. For the remaining 19 cases in which letters were sent, 18 cases had a secondary address in CACS; DOF was unable to explain how it identified an address for the remaining respondent.

As telephone numbers are not received with the case information from ECB, DOF uses Dun & Bradstreet (D&B) to research the telephone numbers. For the 95 violations in which

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<sup>5</sup> CGI is the consultant firm that administers DOF's CACS database.

telephone calls were not made, we searched the online White Pages and were able to find telephone numbers for 24 respondents (25%). DOF officials did not specifically address our question regarding whether these 24 respondents were sent to D&B for telephone number searches. In addition, DOF officials informed us that D&B telephone number searches were implemented for ECB cases in July 2006 and that all existing ECB cases were sent to D&B at that time. After that, new case information was sent to D&B on a quarterly basis (if enough demographic information was available). If the telephone number was available, CACS was updated. DOF officials informed us that during January 2008, they began using Accurint rather than D&B to find telephone numbers and are having a better success rate. However, violations with incomplete addresses or those written to "Owner of . . ." are not sent for telephone number searches.

DOF does not have procedures to identify and segregate those cases with incomplete information so it can focus efforts to find the information itself. DOF officials informed us that as of January 2008, they have begun to identify and segregate cases with incomplete information. However, they do not conduct searches for the information that is lacking and may instead send these cases to an outside collection agency. Therefore, there are respondents who are not receiving any dunning letters or telephone calls from DOF. Further, DOF does not keep track of dunning letters that are returned undelivered and therefore cannot determine which dunning letters do not reach the intended parties. DOF should identify cases for which information is incomplete, track returned mail, and attempt to find accurate information for these respondents so that they can be contacted regarding their violations and fines due the City.

#### **DOF's Internal Collection Procedures Lack Criteria**

DOF provided us with its internal collection procedures, which included some of the required enforcement actions in the MOU. However, the procedures lacked step-by-step criteria. Therefore, we could not determine when each collection step should have been taken or whether the necessary steps were performed.

For cases selected for further collection efforts (beyond sending dunning letters and making telephone calls to respondents), DOF creates paper folders to contain documentation of steps taken and records notes regarding those steps in the folders. According to the MOU, in addition to sending dunning letters, DOF should conduct a review of the cases upon receipt to see if enforcement action may be taken to recover the outstanding judgment debt. This review includes determining whether the judgment debtor was correctly identified on the violation and judgment record and whether the judgment debtor still exists. In addition, a search should be performed for assets of the judgment debtor that may be seized, and if DOF determines that enforcement of a docketed judgment should be taken, then an execution is to be issued and delivered to the Sheriff's Office to enforce the execution (i.e., to seize the judgment debtor's assets). As previously stated, reviews and searches are not being conducted for all cases. DOF selects only certain cases for these collection efforts.

In its procedures, DOF specifically requires that cases be researched to consolidate all the debts of a respondent. If a respondent does not contact DOF, search sources, such as Dun & Bradstreet, Accurint, Lexis-Nexis, and New York State Department of State, should be used to identify assets and to verify the name, address, and telephone number of the respondent. DOF

officials informed us that a respondent's prior payment information is requested from ECB to help in identifying the respondent's bank accounts. DOF can also refer cases to Field Investigations to conduct a field visit. DOF was unable to demonstrate the circumstances under which each of the above steps is performed.

We reviewed the paper folders of the 25 sampled respondents who owed a total amount of \$4,560,450 to the City as of October 2007, and determined that there was no evidence in the folders that certain steps in DOF's procedures were followed. Table I, following, shows the DOF collection steps that were followed for the 25 sampled respondents.

**Table I**  
**DOF Collection Steps Identified for the 25 Sampled Respondents**

|    | Respondent Name                    | NYCServ Consolidation Performed | Search Sources Used |           |             |                    | Field Investigation Conducted | Execution Letters to Seize Assets | Total Number of Procedures Conducted |
|----|------------------------------------|---------------------------------|---------------------|-----------|-------------|--------------------|-------------------------------|-----------------------------------|--------------------------------------|
|    |                                    |                                 | Dun & Bradstreet    | Accurint  | Lexis-Nexis | NYS Dept. of State |                               |                                   |                                      |
| 1  | 2100-2120 Wallace Ave Corp (owner) | X                               |                     |           | X           |                    |                               |                                   | 2                                    |
| 2  | 2131-37 Wallace Ave (owner)        | X                               |                     |           |             |                    |                               |                                   | 1                                    |
| 3  | 133 West 113 St HDFC               | X                               |                     |           | X*          | X*                 |                               | X                                 | 4                                    |
| 4  | MMG Design                         | X                               |                     | X         | X           |                    |                               | X                                 | 4                                    |
| 5  | ATA Housing (owner)                | X                               |                     | X*        | X*          |                    | X*                            |                                   | 4                                    |
| 6  | Fieldbridge Association (owner)    | X                               |                     |           |             |                    |                               | X                                 | 2                                    |
| 7  | Luna Park Housing (owner)          | X                               |                     |           | X           |                    | X*                            |                                   | 3                                    |
| 8  | Zeamra                             | X                               |                     |           |             |                    |                               |                                   | 1                                    |
| 9  | 892 East Tremont Associates        |                                 |                     |           | X           | X                  |                               | X                                 | 3                                    |
| 10 | Bronx Park E Housing Co.(owner)    | X                               |                     |           | X*          | X*                 |                               | X                                 | 4                                    |
| 11 | Residential Mgmt.                  | X                               |                     |           |             |                    |                               | X                                 | 2                                    |
| 12 | Cee-Braid Signal Mgmt Co           |                                 |                     |           | X*          | X                  |                               |                                   | 2                                    |
| 13 | FirstClass Wrecking                | X*                              |                     |           | X*          | X*                 |                               |                                   | 3                                    |
| 14 | RiverBay Corp (owner)              | X*                              | X                   |           | X*          | X                  | X                             |                                   | 5                                    |
| 15 | Iroquois Co.                       | X                               |                     |           |             |                    |                               |                                   | 1                                    |
| 16 | Neighborhood Restore HDFC (owner)  |                                 |                     |           | X*          | X*                 |                               |                                   | 2                                    |
| 17 | Boston Constructions Corp          | X                               |                     |           | X           |                    |                               | X                                 | 3                                    |
| 18 | Nevada Slim Inc.                   |                                 |                     |           | X*          | X*                 |                               |                                   | 2                                    |
| 19 | Plon Realty (owner)                | X*                              |                     |           | X*          | X*                 |                               | X                                 | 4                                    |
| 20 | Finkelstein & Morgan               |                                 |                     |           | X*          | X*                 |                               |                                   | 2                                    |
| 21 | Ovan Construction                  |                                 |                     |           |             |                    |                               |                                   | 0                                    |
| 22 | Mordechai Rubbish Inc              |                                 |                     |           |             |                    |                               |                                   | 0                                    |
| 23 | AAA Construction                   | X                               |                     |           |             |                    |                               | X                                 | 2                                    |
| 24 | Razi Constructions                 |                                 |                     |           | X*          | X*                 |                               |                                   | 2                                    |
| 25 | 340 East 184 St HDFC               |                                 |                     |           | X*          |                    |                               |                                   | 1                                    |
|    | <b>TOTAL</b>                       | <b>16</b>                       | <b>1</b>            | <b>2</b>  | <b>17</b>   | <b>11</b>          | <b>3</b>                      | <b>9</b>                          | <b>59</b>                            |
|    | <b>PERCENTAGES</b>                 | <b>64%</b>                      | <b>4%</b>           | <b>8%</b> | <b>68%</b>  | <b>44%</b>         | <b>12%</b>                    | <b>36%</b>                        | <b>34%</b>                           |

\*DOF performed these steps subsequent to our request for the paper folders.



As can be seen in Table I, NYCServ<sup>6</sup> consolidations were performed for only 16 of the 25 sampled respondents. Although the consolidation of a respondent's debts to the City is an important step, DOF is not ensuring that it consolidates debts for all respondents, due in part to CACS not having the capability to consolidate information and in part to the numerous spelling variations of respondents' names recorded in AIMS by DOB (as discussed later in the report). According to DOF officials, only certain cases are selected for further collection efforts, such as respondents that have accumulated a high dollar amount of fines, high profile cases, or when a special project is initiated. To help consolidate the debt of an owner, DOF uses NYCServ to generate a consolidated bill, but only for select cases. DOF officials were unable to provide us with the detailed criteria used in selecting high-dollar amount cases. We therefore had no basis upon which to determine how DOF selects cases to consolidate in NYCServ and to pursue for further collection.

A search should have been performed for all 25 sampled respondents to determine whether they could be found, as required by the MOU. However, we found evidence that at least one of the search sources was employed for only 17 of the respondents. (For the remaining 8, there was no evidence that any of the search sources was employed.) Furthermore, because of the lack of criteria, we were unable to ascertain whether other methods should have been used for these respondents.

As can be further seen in Table I, no respondent in the sample was pursued using all of the collection steps. Only six cases had evidence that at least half of the stated collection steps were taken. For 15 cases, two or fewer steps were employed. Of these, two had no evidence that any collection steps were taken.

Upon further review of the folders, we determined that a significant number of collection procedures were taken after we had requested the folders from DOF. We requested two of the folders (MMG Design and ATA Housing) on October 30, 2007, and the remaining 23 folders on November 27, 2007. For three cases, no collection procedures were taken by DOF until after our request for the folders. In one other case, the last actions taken by DOF prior to our request had been in December 2005 and for another two cases the last actions had been in July 2006. (DOF had received each of the sampled cases no later than July 2006, more than a year earlier.) Since DOF did not provide us with the folders until after these additional steps were performed, it is clear that these steps should have been taken much earlier.

The DOF Legal Department personnel informed us that as part of its additional collection efforts, DOF attempts to identify liquid assets of a respondent, such as bank accounts. We asked DOF officials what steps are taken to identify liquid assets, and they responded that internal and external search engines and agency databases are used. If there is an indication that a prior payment was made, DOF will attempt to find the source of the payment in an attempt to identify the respondent's bank account. Although some folders contained information obtained from public databases, such as Lexis Nexis, this information would not disclose bank account information. We were unable to determine what steps, if any, DOF took to try to find this information and whether the same steps should have been taken for the other cases. The reviewed files did not indicate any such steps taken by DOF.

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<sup>6</sup> NYCServ is the City's revenue collection computer system.

When we asked whether DOF places liens on real property or seizes personal property (such as vehicles or equipment of a company), officials informed us that they can seize personal property of a respondent, but do not usually do so because they do not have the resources to store the property. They also informed us that the act of docketing a judgment in the Supreme Court automatically places a lien on any real property owned by the respondent. However, DOF officials believe that the best means of collection from respondents is to identify liquid assets. According to DOF officials, to satisfy the judgment debt from a real property lien, DOF would have to force the sale of the property, which is a costly and lengthy process. In addition, we were informed that DOF may not be first in line to collect, as there may be other competing interests, such as mortgages, federal taxes, and earlier judgments. As a result, in practice, DOF collects on the real property liens only when a respondent attempts to sell the property and a title search discloses the existence of the lien. At that time, the respondent would need to satisfy the debt and file a satisfaction of judgment in order to clear the lien. If a respondent does not sell its property and no other asset is found, DOF will not collect from the respondent.

DOF officials informed us that field visits are conducted as an additional step to attempt contact with a respondent and possibly find bank accounts of respondents. After they deliver or attempt to deliver a collection notice to a respondent, the investigators may conduct a walk-through of the neighborhood, speak with neighbors, and make note of area banks. However, we found that field investigators attempted delivery of collection letters in only 3 of the 25 cases, 2 of which were performed subsequent to our inquiry to DOF regarding the 25 sampled respondents. Moreover, no additional information was available for these two respondents. The files did not indicate the outcome of these visits, nor was any formal investigator report completed.

There was no evidence in the files that DOF made requests for prior payment information from ECB for 24 of the 25 cases. During our review of AIMS, we identified prior payments that were made for 22 of the 25 respondents in our sample, yet only one file (MMG Design) indicated that a prior payment inquiry was made to ECB. In this one instance, there was no indication in the respondent's folder of the outcome of this inquiry. We requested payment information from ECB for these 22 respondents and were able to identify potential bank account information for 20 of them (noted on the received checks). For the remaining two respondents, ECB could not locate the checks. DOF should ensure that it makes attempts to obtain all prior payment information from ECB.

Although 9 of the 25 folders had documentation indicating that DOF sent execution letters—seven indicating potential banks of respondents and two non-specific execution letters to the Sheriff's Office to seize any available assets of the respondent—other potential bank account information could have been obtained from ECB. For one of the seven respondents (AAA Construction) about whom an execution letter was sent to a bank, the bank information we obtained from ECB differed from that listed on the execution letter. For the two respondents about whom non-specific execution letters were sent to the Sheriff's Office, we obtained bank account information from ECB. In addition, from the information we obtained from ECB, we identified potential bank accounts for another 12 respondents to whom DOF did not send execution letters. Had DOF obtained the bank account information from ECB for these 15 respondents, it may have been able to find bank accounts and to attempt executions.

In reviewing the case folders, because of the lack of collection procedure criteria detailing when each step should be taken, it was difficult to ascertain for all cases what steps DOF should have performed and whether DOF complied with its collection procedures. Further, we did not see any evidence of a supervisory review. To aid DOF in tracking the collection efforts taken on a case, we believe that the agency should develop some form of a checklist. A checklist would be helpful in identifying all necessary steps required for collection in each case and the outcome of each step. It would formalize the steps and ensure consistency in the collection process. Having a checklist would also provide a means for DOF supervisors to document their review and to ensure that the necessary steps are taken for all cases in a timely manner.

### **Minimal Collection Efforts for Violations Recorded as “Owner of”**

DOF makes no collection efforts for violations written to “Owner of . . .” instead of a person’s or business’s name as the respondent’s name. DOF does not send dunning letters or perform telephone number searches for these violations. The only step DOF may take is sending these cases to an outside collection agency.

DOF’s database, CACS, has more than 8,200 violations totaling approximately \$19 million (14.4% of the approximate total of \$132 million in violations recorded in CACS) that records “Owner of . . .” as the respondent. According to DOF officials, they do not perform any collection efforts when the violation is issued to “Owner of . . .” because it is harder to find liquid assets in the absence of the name of an individual or business.

According to DOF officials, although a respondent may have a docketed judgment, if the violation is not written in the respondent’s actual name, DOF cannot legally enforce a lien on the assets and is unable to enforce the judgment. Furthermore, they told us that in order to enforce a lien on the assets to attempt collection, the judgment would have to be modified and placed against the correct party. Therefore, unless the respondent is contacted by a collection agency and takes the initiative to pay the violation, the likelihood is minimal that DOF would be able to collect on these 8,200 violations.

DOF officials stated that they informed DOB and ECB of their concern regarding violations written to “Owner of . . .” However, when requested, DOF could not provide us with any written document that communicated these concerns to DOB or ECB. Our review of AIMS determined that although the percentage of violations written to “Owner of . . .” was relatively small in Fiscal Year 2007, it had nevertheless more than doubled since the previous year. In Fiscal Year 2006, 2 percent (1,100 of 51,021) of the ECB-DOB violations issued were written to “Owner of . . .” In Fiscal Year 2007, that percentage increased to 4.5 (2,338 of 52,165). As violations are still being written to “Owner of . . .”, it appears that DOF’s concerns have not been addressed. In the meantime, DOF should consider consolidating by address the violations written to “Owner of . . .” and identify those with high dollar amounts. For those violations with high dollar amounts, DOF should request to have the judgments modified and placed against the correct party, as set forth in the MOU.

## **Respondent Name Variations Causing Difficulties for DOF Collection Efforts**

As previously discussed, DOF attempts to consolidate all debts owed by a specific property owner. However, because of the numerous spelling variations of some respondents' names, it is difficult to establish the number of violations that may have been issued to a given respondent. Attempting to perform the consolidation manually is very time consuming. Given the large number of violations, it is possible that DOF may not identify certain violations and include them as part of its collection efforts. In addition, as was the case with the "Owner of . . ." violations, DOF cannot enforce a lien on a respondent's assets if the violation is not written with the correct spelling of a respondent's name.

DOF, ECB, and DOB should resolve the collection difficulties created by the recording of variations in names in order to correct this condition. Accurate recording of respondent names would help DOF in its efforts to consolidate respondent debts, allow it to attempt further collection efforts, and possibly collect additional revenue for the City.

To compensate for the difficulty that name variations cause, DOF officials informed us that they began using a computer program in January 2008 that normalizes addresses in an attempt to aid their consolidation. As indicated in the "Owner of . . ." section above, DOF should also request to have these judgments modified to the correct spelling of a respondent's name and attempt collection when a viable asset is identified.

### **Recommendations**

DOF should:

1. Ensure that dunning letters are sent to all respondents.

**DOF Response:** DOF stated that this recommendation has been "completed." In addition, it made note that "if upon research, Finance cannot find a proper owner at a given address, Collections has not and will not send dunning letters to incomplete addresses or . . . [to] 'owner of . . .' addresses."

**Auditor Comment:** According to the MOU, DOF "will send one or more dunning letter to the respondent." In instances where the address information is incomplete, DOF should conduct additional research to see whether an address can be found. In most cases, dunning letters are DOF's only contact with respondents. If the letters are not sent, there is little likelihood of collecting the fines due.

2. Ensure that adequate searches are performed to find telephone numbers for all respondents.

**DOF Response:** DOF stated that this recommendation has been "completed."

3. Track returned mail and identify respondents with incomplete information in order to obtain the missing or inaccurate information by either making a request to ECB or DOB for the information or by conducting its own search.

**DOF Response:** “Finance agrees. We are in the process of using the Postal Service’s address-change service, and expect that to be incorporated into our processing of return-mail and incomplete addresses.”

4. Establish formal procedures and criteria to identify and select cases for additional collection attempts.

**DOF Response:** DOF stated that this recommendation has been “completed as part of . . . [the] conversion.”

**Auditor Comment:** On April 8, 2008, upon completion of the fieldwork and *three months after* the conversion was completed, we met with DOF officials to discuss the audit’s findings. At no time during or subsequent to this meeting did DOF officials mention that the conversion addressed this issue, nor did they provide us with any evidence to support this claim. We specifically asked DOF officials at the April 8, 2008 meeting whether they have any criteria, such as a dollar-value threshold, to use in selecting cases for additional collection attempts. DOF officials could not provide us any such criteria.

5. Ensure that it adheres to its own internal collection procedures and documents these efforts.

**DOF Response:** DOF stated that this recommendation has been “completed as part of . . . [the] conversion.”

**Auditor Comment:** We are baffled by DOF’s response. We do not see how the conversion is related in any way to DOF’s internal collection procedures. These procedures include manual processes that are separate from the automated processes performed by CACS. For example, DOF’s internal collection procedures include identifying a respondent’s assets to attempt execution, and if no assets are found, the case is to be referred to field investigators. Although DOF’s revised workflow of CACS operations includes a step to forward cases to the Asset Location Unit, the mere existence of the step does not signify that the unit is actually performing it.

6. Contact ECB to obtain prior payment information in an attempt to identify bank accounts of respondents in order to send execution letters to seize assets.

**DOF Response:** “Finance agrees. We will more actively encourage and welcome all relevant and complete payment data, including bank account information, from ECB when it transmits respondent information to us.”

7. Determine whether the bank accounts are viable for the 15 respondents cited in this audit for whom execution letters were not sent to the banks and for whom we identified banks from prior payment information at ECB. If viable, attempt execution against them.

**DOF Response:** “Finance agrees. . . we are hopeful that going forward, ECB will be providing the same bank account information for respondents that it was able to provide auditors.”

**Auditor Comment:** With regards to DOF’s response to recommendations #6 and #7, we are pleased that DOF agrees with these recommendations and that it welcomes all relevant and complete payment data. However, DOF must first establish criteria for identifying and selecting cases for additional collection attempts, determine whether prior payments were made, and then request the prior payment information from ECB.

8. Create a checklist to aid in its collection efforts to ensure that all required collection procedures are taken and documented.

**DOF Response:** DOF stated that this recommendation has been “completed . . . as part of . . . conversion.”

9. Monitor and document the review of the collection efforts of each case to ensure that all necessary steps are taken in a timely manner.

**DOF Response:** DOF stated that this recommendation has been “completed . . . [and] a checklist was created as part of . . . conversion.”

**Auditor Comment:** With regards to DOF’s response to recommendations #8 and #9, although DOF claims that a checklist has been created as part of the conversion, it provided no such checklist to us. Therefore, we are unable to verify the validity of this claim.

10. Continue to document its difficulties in collecting violations written to “Owner of . . .” to DOB and ECB until the condition is resolved. In the meantime, DOF should consolidate by address the violations written to “Owner of . . .” and identify those with high dollar amounts, then request to have the judgments modified and placed against the correct party.

**DOF Response:** “Finance disagrees . . . there is no simple resolution of ‘owner of’ violation problems. Consolidation of violations by address assumes that the same entity is the owner of the property during the time when the violations have accrued. In fact, the owner of a particular property may change and consolidating violations by address will not help resolve the debt.”

**Auditor Comment:** Although DOF rejects the efficacy of consolidating violations by address, it has not demonstrated that it reached this conclusion only after testing the

practice. Before rejecting the recommendation, DOF should first perform the consolidation to determine its feasibility. After consolidating violations by address, DOF could then group the violations by issuance date and determine the owner at the time the violation was issued using its Automated City Register Information System. Since DOF continues to receive violations written to the “Owner of . . .” that hold little or no promise of collection, it needs to develop alternate steps to attempt collection on these violations. Accordingly, we reaffirm this recommendation.

11. Document to DOB and ECB its concerns and difficulties with collecting on violations written to respondents with name variations so that the agencies can address these problems. When a viable asset is identified, DOF should attempt to have the judgments modified to the correct spelling of a respondent’s name.

**DOF Response:** “Finance disagrees. The agency is not authorized under the law to amend any judgment.”

**Auditor Comment:** We are not suggesting that DOF amend any judgment on its own. According to the MOU, “either DOF or the City agency that issued the original violation . . . may identify violations that should be considered for judgment amendment.” The MOU further states that the issuing City agency should petition ECB to amend the judgment and to serve the appropriate documents to the debtor. Therefore, DOF should discuss any discrepancies identified on the violations with DOB and request DOB to initiate the process to modify the violation so that the judgment may in turn be modified to allow DOF’s collection enforcement.

### **Docketed Cases Not Forwarded to DOF in a Timely Manner**

ECB did not send docketed cases to DOF in a timely manner. According to ECB officials, docketed cases are forwarded to DOF on a quarterly basis. As of October 1, 2007, the most recent month that violations were issued and recorded in CACS was October 2005. Upon further review, we determined that the last time DOF received cases from ECB was July 14, 2006. When we asked CGI officials about the delay, they told us that they did not know why docketed cases were not being sent, but did not follow up with ECB to determine the cause. When we asked ECB’s Computer Specialist about the delay, he informed us that during a meeting on December 13, 2006, DOF told ECB that its CACS system was being updated and requested that ECB not send cases until the update was completed. According to the minutes of that meeting, the targeted completion date for the update was April 30, 2007. However, ECB did not follow up with DOF to check on the status of the update after the anticipated completion date had passed.

According to a CGI official, the CACS system update was completed during January 2008. ECB stated that it sent docketed cases to DOF on January 11, 2008. We requested from ECB the list of cases that were sent and were provided a list of 19,956 docketed cases with a combined fine value of \$58.7 million. As cases were not forwarded by ECB to DOF for more

than 19 months, the delay significantly reduced the time available to collect from these respondents and may have limited DOF's chance to successfully collect on them.

By the time that DOF receives a case from ECB, a significant amount of time has already elapsed. The delay will negatively affect DOF's new collection procedures. According to its new procedures, DOF would perform additional collection efforts only with respondents having current judgment dates of less than one year. Since these violations were not sent in a timely manner, there may be cases that will not be reviewed by DOF for additional collection efforts.

### **Recommendations**

12. ECB and DOF officials should ensure that docketed cases are sent and received in a timely manner to allow DOF the time needed to make all necessary collection efforts.

**ECB Response:** "ECB recognizes the importance of referring cases to the Department of Finance in a routine and consistent manner. The decision not to refer cases to Finance on a quarterly basis was a joint decision due to system upgrades by the Department of Finance. It should be noted that since the upgrades have been completed, ECB referrals have been made on a timely basis."

**DOF Response:** DOF stated that this recommendation has been "completed as part of . . . conversion."

**Auditor Comment:** ECB and DOF should continue to ensure that docketed cases are received in a timely manner. If there are any future delays in sending docketed cases, ECB and DOF should communicate with each other to ensure that the problem is resolved in a timely manner.

13. DOF officials should review cases that were not received in a timely manner and conduct additional collection efforts despite its new procedures.

**DOF Response:** DOF stated that this recommendation has been "completed as part of . . . conversion."

**Auditor Comment:** According to the revised workflow of the CACS operations resulting from the conversion, DOF would not perform additional collection efforts for respondents with in-default violations having current judgment dates of more than one year. As violations were not sent for more than 19 months, there are cases that will not be reviewed by DOF to determine whether they warrant additional collection efforts. DOF should ensure that these cases are reviewed.

Further, DOF's revised workflow indicates that, in-default violations will be sent only to an outside collection agency for pursuit. However, as discussed in the following section, DOF has not forwarded ECB-DOB cases to the outside collection agency since July 2005, nor has DOF provided documentation indicating that it has since submitted any of these cases.



## **Cases Not Forwarded to Collection Agency**

DOF has not forwarded cases to an outside collection agency since July 2005. According to the procedures contained in Workflow,<sup>7</sup> if assets are not found or are non-executable, the cases should be sent to an outside collection agency. However, on July 30, 2007, DOF officials informed us that such cases were not sent since the contract with DOF's prior collection agency had expired on June 30, 2006, and that the contract with the current collection agency had not been finalized.

We later learned from a DOF official that DOF had a contract with a collection agency since March 2007, which covered ECB judgment debt as well as other debt types, but since the contract was not ECB-case-specific, the Collections Division did not use this contract for the collection of ECB violations. Instead, according to the official, the collection agency is "aggressively and successfully working parking debt . . . and recently received a large tax assignment." Had DOF sent ECB violations (e.g., building code violations) to the collection agency, it may have been able to collect on cases for which DOF's in-house efforts were unsuccessful.

The prior 2002 Comptroller's Office report, *Audit Report on the Department of Finance's Collection of Penalties Imposed in Environmental Control Board Cases*, cited DOF for not awarding an ECB-case-specific contract with a collection agency.

### **Recommendation**

14. DOF officials should use the contract with its collection agency in order to assist in its fine collection efforts for ECB-DOB violations.

**DOF Response:** DOF stated that this recommendation has been "completed. Finance has active contracts with two different collection agencies, Universal and Allied, which already aid us in these efforts."

**Auditor Comment:** Although we learned that DOF has contracts with two different collection agencies, these contracts were not being used to collect in ECB-DOB cases, but were rather used to collect in other cases, such as parking debt. As stated previously, ECB-DOB cases have not been submitted to an outside collection agency since July 2005, and DOF did not provide documentation indicating that any ECB-DOB cases were sent to either of these collection agencies. During the April 8, 2008 meeting with DOF officials, we were informed that the ECB-DOB cases still had not been sent to the collection agencies because the agencies were not set up to receive ECB-DOB cases and that the agencies were undergoing technical testing to determine whether they could eventually receive such cases. Nevertheless, at the exit conference, *five months subsequent* to that meeting, DOF officials still did not provide us with any evidence that ECB-DOB cases were forwarded to a collection agency.

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<sup>7</sup> The Workflow is part of DOF's collection procedures for ECB cases.

**Businesses Continue to Operate with Open and Outstanding Violations**

Our review of the DOB's Buildings Information System (BIS) determined that 21 of the 25 sampled respondents had current open violations (as of May 2008), meaning that the respondents have not resolved the cited problem, and 24 had unpaid violations. Table II, below, lists the 25 sampled respondents and the number of sampled violations that remain unresolved and unpaid.

**Table II**  
**List of the 25 Sampled Respondents with**  
**Sampled Violations That Remain Unresolved and Unpaid**

|    | Respondent Name                    | As of October 2007 (as listed in<br>DOF's CACS system) |                                 |                           | As of May 2008 (as listed in DOB's BIS<br>system) |                                       |   |
|----|------------------------------------|--|---------------------------------|---------------------------|---|---------------------------------------|---|
|    |                                    | # of<br>NOVs   | Total<br>Amount of<br>Fines Due | NOV<br>Issuance<br>Period | # of NOVs<br>That Remain<br>Unresolved            | # of NOVs<br>That<br>Remain<br>Unpaid | Dollar<br>Amount of<br>Fines That<br>Remain<br>Unpaid |
| 1  | 2100-2120 Wallace Ave Corp (owner) | 56   | \$259,630                       | 1997-2005                 | 48  | 54                                    | \$256,930   |
| 2  | 2131-37 Wallace Ave (owner)        | 63   | \$255,000                       | 1998-2005                 | 63  | 59                                    | \$245,000   |
| 3  | 133 West 113 St HDFC               | 32   | \$266,000                       | 1998-2004                 | 31  | 31                                    | \$263,500   |
| 4  | MMG Design                         | 111  | \$345,450                       | 2002-2005                 | 33  | 110                                   | \$342,950   |
| 5  | ATA Housing (owner)                | 80   | \$399,920                       | 2000-2005                 | 22  | 0                                     | \$0   |
| 6  | Fieldbridge Association (owner)    | 115  | \$355,410                       | 2000-2005                 | 6   | 114                                   | \$354,710   |
| 7  | Luna Park Housing (owner)          | 74   | \$228,550                       | 1999-2005                 | 51  | 49                                    | \$112,600   |
| 8  | Zeamra                             | 46   | \$216,460                       | 2002-2004                 | 0   | 46                                    | \$216,460   |
| 9  | 892 East Tremont Associates        | 26   | \$207,500                       | 1999-2003                 | 0   | 26                                    | \$207,500   |
| 10 | Bronx Park E Housing Co.(owner)    | 59   | \$124,080                       | 1998-2005                 | 13  | 58                                    | \$123,280 <sup>8</sup>                                |
| 11 | Residential Mgmt.                  | 56   | \$200,070                       | 1998-2004                 | 3   | 55                                    | \$197,570   |
| 12 | Cee-Braid Signal Mgmt Co.          | 44   | \$162,800                       | 1998-2004                 | 18  | 42                                    | \$160,800   |
| 13 | FirstClass Wrecking                | 59   | \$144,500                       | 1998-2005                 | 9   | 54                                    | \$135,000   |
| 14 | RiverBay Corp (owner)              | 109  | \$83,080                        | 1998-2003                 | 6   | 40                                    | \$55,270  |
| 15 | Iroquois Co.                       | 37   | \$127,800                       | 1998-2000                 | 7   | 37                                    | \$127,800   |
| 16 | Neighborhood Restore HDFC (owner)  | 39   | \$126,780                       | 2002-2005                 | 21  | 39                                    | \$126,780   |
| 17 | Boston Constructions Corp          | 36   | \$126,750                       | 2002-2005                 | 0   | 36                                    | \$126,750   |
| 18 | Nevada Slim Inc.                   | 29   | \$123,500                       | 1998-2002                 | 1   | 29                                    | \$123,500   |
| 19 | Plon Realty (owner)                | 67   | \$148,260                       | 1998-2001                 | 7   | 64                                    | \$127,260   |
| 20 | Finkelstein & Morgan               | 43   | \$127,500                       | 1998-2005                 | 0   | 43                                    | \$127,500   |
| 21 | Ovan Construction                  | 41   | \$121,500                       | 2002-2005                 | 8   | 41                                    | \$121,500   |
| 22 | Mordechai Rubbish Inc              | 32   | \$101,700                       | 2000-2004                 | 3   | 32                                    | \$101,700   |
| 23 | AAA Construction                   | 49   | \$102,250                       | 2003-2005                 | 7   | 49                                    | \$102,250   |
| 24 | Razi Constructions                 | 85   | \$100,960                       | 2000-2004                 | 5   | 80                                    | \$97,960  |
| 25 | 340 East 184 St HDFC               | 33   | \$105,000                       | 1998-2001                 | 32  | 33                                    | \$105,000   |
|    | <b>TOTAL</b>                       | <b>1,421</b>   | <b>\$4,560,450</b>              |                           | <b>394</b>  | <b>1,221</b>                          | <b>\$3,959,570</b>                                    |

As can be seen in Table II, 394 (28%) of the 1,421 sampled violations remain unresolved, and 1,221 (86%) remain unpaid. Only one respondent, ATA Housing, paid all of its fines. Twenty-four of the 25 sampled respondents owe fines to the City totaling approximately \$4

<sup>8</sup> During the exit conference, DOF officials informed us that additional collection efforts were taken on Bronx Park E Housing Co. We reviewed DOB's BIS on September 19, 2008, and determined that the current dollar amount of unpaid fines was \$84,330.

million. However, most of them still have open violations and are nonetheless allowed to continue their business operations.<sup>9</sup>

On average, the fines for the 1,221 violations for these 24 sampled respondents remained unpaid for 1,751 days (almost five years) from the approximate time they were referred to DOF through May 1, 2008. The range of days from the docket dates (the dates the judgments were filed with the court) that these violations remained unpaid was 640 days to 3,378 days. Table III, below, shows the range of days that violations remained unpaid and the total number of violations and total fine amounts within each range. As can be seen in Table III, there were 244 violations (20% of the 1,221 violations) that remained unpaid from the docket dates through May 1, 2008, for 1,096 to 1,460 days (between three and four years), totaling \$980,960. Further, as indicated in Table IV below, there was a total of 1,008 violations that remained unpaid for at least three years from the docket dates, totaling approximately \$3.4 million. Moreover, there were 193 violations totaling \$586,260 that are nearing the statute of limitations and will soon be uncollectible.

**Table III**  
Number of Days from Docket Date  
That Violations Remained Unpaid

| <b>Range of Days Violations Remained Unpaid</b> | <b>Number of Violations That Remained Unpaid</b> | <b>Total Fine Amount of Unpaid Violations</b> |
|---|--|---|
| 1 to 365  | 0  | \$0   |
| 366 to 730                                      | 1  | \$200   |
| 731 to 1,095                                    | 212  | \$519,650                                     |
| 1,096 to 1,460                                  | 244  | \$980,960                                     |
| 1,461 to 1,825                                  | 235  | \$986,800                                     |
| 1,826 to 2,190                                  | 136  | \$525,580                                     |
| 2,191 to 2,555                                  | 200  | \$360,120                                     |
| 2,556 to 2,920                                  | 169  | \$515,860                                     |
| 2,921 to 3,285                                  | 15   | \$47,900                                      |
| 3,286 to 3,650                                  | 9  | \$22,500                                      |
| <b>TOTAL</b>                                    | <b>1,221</b>                                     | <b>\$3,959,570</b>                            |

<sup>9</sup> New York State Department of State records indicate that the incorporation status of at least 20 of the 25 respondents is currently active.

**Table IV**  
Number of Years from Docket Date  
That Violations Remained Unpaid

| <b>Number of Years Violations Remained Unpaid</b> | <b>Number of Violations Remaining Unpaid for Indicated Number of Years at Minimum</b> | <b>Total Fine Amount of Unpaid Violations</b> |
|---|---|---|
| 1   | 1221  | \$3,959,570                                   |
| 2   | 1220  | \$3,959,370                                   |
| 3   | 1008  | \$3,439,720                                   |
| 4   | 764   | \$2,458,760                                   |
| 5   | 529   | \$1,471,960                                   |
| 6   | 393   | \$946,380                                     |
| 7   | 193   | \$586,260                                     |
| 8   | 24  | \$70,400                                      |
| 9   | 9   | \$22,500                                      |
| 10  | 0   | \$0   |

The 24 respondents are not only ignoring the fines issued against them, but are at times not correcting the violations. The fines assessed against some respondents are not acting as an incentive for the respondents to correct the violations since the City is not holding them liable and is not collecting the fines they owe. As a result of DOF's failure to collect the hundreds of thousands of dollars these respondents owe in fines, the City is losing revenue. In addition, there are public safety issues involved that should not be ignored.

The Mayor and news media have reported the occurrence of numerous construction accidents throughout the City during the past year, some of which were fatal to workers and members of the public. For example, on March 15, 2008, a crane accident at 303 East 51<sup>st</sup> Street in Manhattan killed seven people and injured others. This building had 21 open ECB-DOB violations as of May 2008, 12 of which had defaulted unpaid penalties totaling \$39,380.

We learned that the Department of Transportation (DOT) has initiated a special project whereby individuals or businesses seeking a DOT permit must first go to DOF to obtain documentation to show that they do not owe any outstanding fines. If fines are owed, DOT will not issue permits to the individual or business. DOT's administrative code, §19-103(f), authorizes DOT's Commissioner to:

Refuse to issue a permit to an applicant (i) who has exhibited a pattern of disregard for the provisions of [Title 19 relating to the issuance of the permit] or (ii) who has been found liable by a court or in a proceeding before the environmental control board for a violation of any provision of [Title 19 relating to the issuance of the permit], which violation caused an imminent peril to life or property.

Although DOB's administrative code does not explicitly state that it has similar recourse against repeat violators, the code does not prohibit DOB from establishing its own rules and regulations to help protect the public from unscrupulous and negligent business practices. DOF,

DOB, and ECB should develop a procedure to identify respondents with dangerous violations and/or large amounts of unpaid fines so that DOB would be able to deny the issuance of permits or revoke current work permits to those respondents until all fines have been paid.

### **Recommendation**

15. DOF and ECB officials should consider legislative changes that would allow for additional enforcement capabilities to assist the agencies in their collection efforts. In addition, DOF and ECB officials should consider initiating a project with DOB whereby DOB would be able to deny permits to respondents with open and outstanding violations.

**ECB Response:** “ECB is willing to work with Finance and oversight agencies to identify ways to improve overall enforcement of ECB violations. ECB also recognize the value of tying outstanding violations to the issuance of permits or licenses. This is currently done in certain instances by the Department of Transportation and the Department of Health and Mental Hygiene. We will pass this recommendation along to the Department of Buildings so they may evaluate and determine the appropriate course of action.”

**DOF Response:** “Finance disagrees that advocating changes to the law is our agency’s proper role here. We are only the collection agency for these violations, and so we always have and will continue to defer to our sister enforcement agencies in their recommendations on increasing ‘enforcement capabilities.’”

**Auditor Comment:** As stated previously, DOF is currently participating in a special project with DOT whereby permits are denied to individuals or businesses that have outstanding fines. DOF, as the collection agency for the City, has access to outstanding fine information and could provide valuable insight to help DOB, as well as other agencies, institute a similar process.

Under a new plan being considered by the Mayor’s Office, a City agency that grants permits and services to a business could be used to leverage payments to another. DOF would have an important role in this new plan. This plan would deter individuals or businesses from violating laws in the future and encourage the payment of the associated fines. DOF should use all methods available to assist in its collection efforts and aid the Mayor’s Office as well as DOB to formulate a plan to institute the changes necessary to carrying out this plan.

### **DOF Does Not Monitor Effectiveness of Its Collection Activities**

DOF does not track the amounts of ECB-DOB violation fines it collects as compared with the total cases received for the same time period and is therefore unable to calculate its collection rate for these fines. As a result, neither we nor DOF are able to determine the effectiveness of DOF’s collection activities. According to Comptroller’s Directive #1, “Principles of Internal Controls,” agencies should establish effectiveness and efficiency

measures and compare them over time to determine how well goals are being met and whether resources are being used efficiently and effectively. One key measure of collection activities is the collection rate, the percentage of outstanding fines that is collected.

A CGI official informed us that CACS does not contain the information necessary to determine DOF's collection amounts for ECB-DOB violation fines. DOF officials informed us that when payments are received, they are either referred to ECB for recording in AIMS or NYCServ or are recorded in NYCServ by DOF. As AIMS and NYCServ are linked, payments entered in either system automatically update payments recorded in the other. CACS is not linked to AIMS or NYCServ and does not reflect fine payments until ECB electronically sends DOF daily violation payment updates. However, these updates reflect only the fine balance due amounts and do not identify specific payment information, such as the agency that effected collection of the fine.

In the absence of a collection rate for ECB-DOB violation fines, neither we nor DOF could determine the overall effectiveness of DOF's collection efforts. Based on our review of DOF's collection efforts for the 25 sampled respondents, it appears that DOF's current procedures are not working. As stated earlier, 1,221 of the 1,421 sampled violations remained unpaid for an average of 1,751 days (from the docket dates) as of May 1, 2008. Identifying DOF's collection rate for ECB-DOB violation fines is important and would help DOF to determine whether its current collection procedures are effective, whether there are trends in collection performance, and whether the procedures need to be reevaluated.

During the exit conference, DOF officials informed us that as of January 2008, following the upgrade of CACS, they are now able to track DOF's collection amounts of ECB-DOB violation fines. However, on several occasions in July 2008 and August 2008 during the course of the audit, we requested collection data from DOF and inquired about DOF's ability to determine the *collection rate* of ECB-DOB violation fines. We received no response other than that indicated above from CGI. At no time did DOF or CGI make any mention or indication of DOF's present ability to track ECB-DOB violation fine payments or its ability to calculate its collection rate.

As verification of DOF's present ability, we requested from DOF documentation illustrating the collection data of ECB-DOB violation fines resulting from DOF's efforts. On September 16, 2008, DOF officials provided us with a summary total of resolved debt covering the period January 11, 2008, through September 11, 2008. However, this summary merely indicated the total number and total dollar value of payments of ECB-DOB violation fines received, as well as the total number and total value of ECB-DOB violation fines that were credited (the fine value was reduced), written off (as a result of the violation reaching the statute of limitations), or recalled to ECB for a hearing at the request of the respondent. Without knowing the time period when these violations were referred to DOF for collection and the total value of the referred ECB-DOB violation fines for the same time period, the true collection rate of DOF's efforts cannot be determined.

## **Recommendation**

16. DOF officials should track ECB-DOB violation fine payments that result specifically from its collection efforts to determine the collection rate so as to monitor the effectiveness of DOF collection procedures.

**DOF Response:** DOF stated that this recommendation has been “completed as part of . . . [the] conversion. In fact, a tracking sheet for ECB Building Code violations was provided to the auditors after the exit conference.”

**Auditor Comment:** DOF did not provide us a tracking sheet for ECB Building Code violations. As stated previously, on September 16, 2008, subsequent to the exit conference, DOF officials provided us with only a summary total of resolved debt, which on its own cannot be used to determine the actual collection rate. Without knowing the details of the violations included in the summary total, such as the time period when these violations were referred to DOF for collection and the total value of the referred ECB-DOB violation fines for the same time period, DOF will be unable to determine its true collection rate.

## **Other Issue**

### **Verification of Transmitted Data Not Performed**

ECB does not verify that all data is transmitted to DOF when it forwards docketed cases. As a result, there is a risk that all cases intended to be sent to DOF may not be received and that both ECB and DOF would be unaware of it. To ensure that all data is received, ECB should generate a sync report when transferring information to DOF.

During the exit conference, DOF officials informed us that as of January 2008, following the upgrade of CACS, a verification of the transferred data is now performed. According to DOF’s Director of Parking and Collection Systems, although no formal report is generated, when the data is transmitted to DOF from ECB a message appears on the screen indicating whether the file was transmitted successfully. If an error message is displayed indicating that the number of records is incorrect, DOF is to contact ECB to determine the cause of the error and to have it resolved. However, ECB is relying on DOF to contact ECB’s Information Technology staff in the event of a problem instead of systematically tracking the status of transfers.

## **Recommendation**

17. ECB should generate a sync report when transferring docketed cases to DOF to ensure that DOF receives all cases.

**ECB Response:** “ECB will develop a control report which will be transmitted at the time of each referral of docketed cases. ECB anticipates that the report will be available by late December 2008.



### **Detailed Discussion of the DOF Response**

During the course of the audit, we had numerous meetings and correspondence with DOF officials to discuss the issues addressed in this report. Nevertheless, in their response, DOF officials expressed their overall disappointment with this audit. They stated that they had recognized many of the weaknesses identified in this report and were committed to addressing them as part of the DOF information-technology conversion (upgrade of CACS) that was completed in January 2008. In addition, DOF officials claimed that they had shared details of this conversion with us not only throughout the course of the audit, but also in explicit detail at the exit conference held during September 2008.

Based on arguments raised in the DOF response, it is clear that DOF was not forthcoming with information and documentation when we requested it during the audit. DOF claims that it provided us with explicit details of the information-technology conversion at the exit conference. However, no such information was shared with us. On April 4, 2008, DOF provided us a revised workflow of the CACS operations resulting from this conversion. However, this document merely illustrates the computerized steps that are performed by CACS when ECB-DOB violations are received from ECB. Since the workflow document does not include any of the manual collection procedures to be taken by DOF personnel, it does not address any of the key concerns addressed by this audit.

#### **Re: Companies Still Conducting Business**

##### **DOF Response:**

“As the collection agency for this debt, Finance has no legal authority to close businesses that do not pay ECB fines. Besides, the overarching goal of City government should be to find the way to get businesses to obey important laws; the threat to shutter businesses should be saved for only the most dangerous and egregious law-breakers—and the draft audit offers no evidence that any of the sampled businesses are in that category.”

##### **Auditor Comment:**

We did not infer that DOF should close businesses that do not pay ECB fines. We recommend that DOF, DOB, and ECB develop a procedure to identify respondents with dangerous violations and/or large amounts of unpaid fines so that DOB would be able to deny the issuance of permits or revoke current work permits to those respondents until all fines have been paid.

Further, as businesses are still operating, DOF should improve its efforts to collect the fines due from them. We are in agreement that the City government should find a way to get

businesses to obey the laws. One such way would be to collect fines from respondents in hopes that this would be a deterrent to individuals and/or businesses who would otherwise commit violations. As most of our sampled respondents are repeat offenders with outstanding fines still owed, had the City collected the fines due, some of the sampled violations might not have occurred. DOF appears to be lax in its collection efforts and, as the audit disclosed, needs improvement over its recordkeeping and collection process as well as in its supervisory oversight to ensure that all viable collection steps have been taken.

**Re: Scope and Methodology**

**DOF Response:**

“The draft audit states ‘the database included some 52,000 violations with fines totaling about \$132 million for the period December 1983 through October 2005.’

“While these numbers at first appear large and impressive, they are irrelevant. In fact, Finance’s lawyers made auditors well aware of the law’s eight-year statute of limitations for collections. (See New York City Charter § 1404 d (1)(g).) That is, any ECB debt prior to the year 2000 is legally uncollectible, so it is unclear why auditors would even consider 23-year old violations in their research.”

**Auditor Comment:**

The database to which DOF refers was provided to us by DOF. We question DOF’s retention of these records on file if they are “irrelevant” and uncollectible. At the onset of the audit, ECB’s Computer Specialist informed us that ECB had a major write-off during early 2007, which removed all violations that reached or exceeded the statute of limitations as of the date of the write-off. Our request for a copy of the database was made subsequent to this write-off. We are aware that the statute of limitations for the violations is eight years. However the eight-year period begins from the docket date, not from the violation issuance date. The period December 1983 through October 2005 refers to the violation issuance dates. As CACS does not include a field for the docket date, we were unable to ascertain whether any of the violations reached the eight-year statute of limitation, especially since cases can be re-opened upon request from a respondent and sent back to ECB for adjudication. That being the case, we understood that the database provided to us included all violations under DOF’s review and subject to its collection procedures. At no time during the audit did DOF officials inform us otherwise.

**Re: Review of New York Department of State website**

**DOF Response:**

“The draft audit notes that in investigating the companies in the sample, auditors reviewed the New York Department of State website to see ‘whether respondents were active companies.’

“Finance would only note that to be ‘an active company’ with the Department of State, a business has met only the very lowest of hurdles. As our Collections unit already regularly does, we hope auditors would research using resources that identify those businesses that are *currently* doing business and have collectible assets.”

**Auditor Comment:**

We are puzzled by DOF’s seeming disregard for this step; a review of the New York Department of State Web site is a procedure performed by DOF’s own staff. Therefore, it was necessary for us to perform the review to validate the information received by DOF. The purpose of our audit testing was not, nor was it intended, to identify collectible assets, as suggested by DOF. That is the responsibility of DOF.

**Re: “Owner of . . .” Violations**

**DOF Response:**

“The draft audit addresses the collectability of ‘Owner of ...’ violations, noting that ‘[Finance] could not provide us with any written document that communicated’ the agency’s concerns to ECB or Buildings.

“The difficulty of collecting ‘Owner of’ violations has been widely discussed since at least 2000 among city agencies. In those discussions, the Buildings Department, the main issuing agency and the Law Department, which legally represents all issuing agencies, have agreed that the City has had and will continue to have very limited success in pursuing debt when the party that owns a property is not specifically named in the violations.

“Because of this long history and legal precedent, it is simply baffling for the draft audit to criticize Finance for not being able to produce documentation that shows our ‘concerns’ with the ongoing and well-established state of affairs around the issuance of ‘owner of . . .’ violations.”

**Auditor Comment:**

We do not dispute the fact that there can be difficulty in collecting fines from violations that are not written in the specific name of the property owner, such as violations written to the “Owner of . . .” Although DOF claims that the difficulty of collecting “Owner of . . .” violations has been “widely discussed” with DOB, it provided no evidence. Absent evidence, we cannot substantiate this claim nor determine whether DOF explicitly expressed to DOB its difficulties in collecting these violations. As identified in this report, violations written to the “Owner of . . .” seem to reflect a growing problem—the percentage of the ECB-DOB violations written to “Owner of . . .” increased from 2 percent to 4.5 percent from Fiscal Year 2006 to 2007. It does not appear that this concern has been addressed. DOF should formally document to ECB and DOB its concerns with collecting on violations written to “Owner of . . .” in hopes of resolving this issue.

**Re: DOF’s Final Thoughts**

**DOF Response:**

“While I know it is easier for a given audit team to look at problems from a compartmentalized agency-focused perspective, that may not be enough. In some cases, an inter-agency, more holistic perspective would be more helpful to address underlying problems.

“I found it especially ironic that during the period the auditors were looking at, a State Supreme Court decision was issued addressing the fact that many ECB violations were served poorly. . . .That decision, which is critical to the matter being examined by your auditors, goes completely unmentioned in the audit.

“Finance believes that for all violations, the person who committed the offense has a right to know what the offense was and when it occurred. That’s the only way they’ll be able to correct the offense. A respondent shouldn’t first learn of the offense at the very end of the process when Finance is trying to collect. The draft audit loses sight of why ECB violations are issued in the first place: violations are not issued for money, but to deter behavior.

“New York City must do all that it can to improve the accuracy of issuance and notice up front. And an audit that recognizes the direct correlation within all elements of the process, from issuance to collection, would help all involved agencies provide enforcement of critical laws that is both fair and effective.”

**Auditor Comment:**

The objective of this audit focused on collection efforts, not on the issuance of the violations.

Further, the State Supreme Court decision mentioned in DOF's response was issued subsequent to the completion of the audit's fieldwork testing. In addition, the ruling has no bearing on this audit. The purpose of this audit was not to determine the accuracy of the violations' issuance, but rather the collection of unpaid fines. We agree that the City must do all that it can to improve the accuracy of the initial issuance and notice. If DOF is encountering problems with the issuance of the violations, it should formally document its concerns with DOB and ECB officials to ensure that all affected parties are aware of these problems and can devise a solution to correct them.

If a respondent does not pay a fine and experiences no collection efforts, there is nothing to prevent the respondent from committing future violations without suffering any consequences. The deterrent value of levying fines is thus rendered nonexistent.



**ENVIRONMENTAL CONTROL BOARD**

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November 19, 2008

John Graham  
Office of the Comptroller  
Deputy Comptroller  
Audits, Accountancy and Contracts  
1 Centre Street  
New York, NY 10007

Re: Audit Report on the Processes of the  
Environmental Control Board and the Department  
of Finance to Collect Fines for Violations  
Issued by the Department of Buildings – MD08-071A

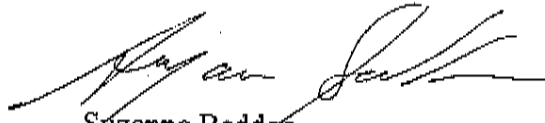
Dear Deputy Comptroller Graham:

I am responding to your letter of November 3, 2008 to Acting Commissioner Lawitts regarding the above referenced audit. First let me take the opportunity to thank you and your staff for the professional work they performed during this audit.

Attached hereto, please find our comments to recommendations specific to ECB. ECB recognizes the importance of a coordinated interagency effort that will allow for a more robust enforcement of the Department of Building's judgments. As such we will actively partner with the Department of Finance and the Department of Buildings and oversight agencies to improve the overall quality of information sharing relating to collection efforts.

Thank you for the opportunity to provide comments on the audit.

Very truly yours,



Suzanne Beddoe  
Executive Director

Recommendation 12. ECB recognizes the importance of referring cases to the Department of Finance in a routine and consistent manner. The decision not to refer cases to Finance on a quarterly basis was a joint decision due to system upgrades by the Department of Finance. It should be noted that since the upgrades have been completed, ECB referrals have been made on a timely basis.

Recommendation 15. ECB is willing to work with Finance and oversight agencies to identify ways to improve overall enforcement of ECB violations. ECB also recognize the value of tying outstanding violations to the issuance of permits or licenses. This is currently done in certain instances by the Department of Transportation and the Department of Health and Mental Hygiene. We will pass this recommendation along to the Department of Buildings so they may evaluate and determine the appropriate course of action.

Recommendation 17. ECB will develop a control report which will be transmitted at the time of each referral of docketed cases. ECB anticipates that the report will be available by late December 2008.

c: Steve Lawitts, Acting Commissioner  
Roberto Velez, Chief Administrative Law Judge, OATH  
Mark Ritze, Assistant Commissioner





December 2, 2008

John Graham  
Deputy Comptroller  
Audits, Accountancy and Contracts  
Office of the City Comptroller  
1 Centre Street  
New York, NY 10007

**Re: Audit MD08-071A**

Dear Mr. Graham:

This letter will serve as the Department of Finance's response to the above draft audit, dated November 3, 2008, which addresses the processes of the Environmental Control Board (ECB) and the Department of Finance to collect fines for violations issued by the Department of Buildings. Before I address the individual recommendations contained in the audit, let me first thank you for this opportunity to respond. Because this audit addresses the collection of fines on violation of laws governing unsafe building conditions, it touches on extremely important matters that have been a grave concern of this Administration.

At the outset, let me express my overall disappointment with this audit. As you will see from the recommendations below, Finance had already recognized many of the past weaknesses your auditors purport to have found around collections of ECB Buildings fines. Given that violations are only referred to Finance after ECB has tried to collect for eighteen months, the violations at issue in this audit are the kind that have proven particularly challenging. And Finance had committed to address these challenges as part of a large-scale multi-unit, information-technology conversion to an automated system. **This conversion was completed in January, 2008** -- with details shared with your audit team throughout this year and reiterated in explicit detail at the exit conference three months ago.

Graham ECB Collections Draft Audit Response Letter  
MD08-071A, page 2

Instead of offering timely insight into whether the recent conversion addresses the problems that all parties agree have heretofore existed, the draft audit is almost completely silent on the conversion, mostly written as if none of these changes had ever been undertaken. Unfortunately, this willful obliviousness to present circumstances greatly minimizes what could have been a very useful audit.

So in this letter, I would first like to address the wholesale misrepresentation, questionable protocol and errors contained in the audit. I will then speak to the audit's seventeen recommendations. Finally, I will suggest what might have been a more helpful approach by auditors to the myriad issues surrounding building code violations.

**Misrepresentations, Questionable Protocol and Errors of Fact**

- On page 2 of the draft audit, the auditors note that companies with outstanding fines are "still conducting business."

This is a strange complaint. As the collection agency for this debt, Finance has no legal authority to close businesses that do not pay ECB fines. Besides, the overarching goal of City government should be to find the way to get businesses to obey important laws; the threat to shutter businesses should be saved for only the most dangerous and egregious law-breakers - and the draft audit offers no evidence that any of the sampled businesses are in that category.

- On page 6, noting scope and methodology, the draft audit states "the database included some 52,000 violations with fines totaling about \$132 million for the period December 1983 through October 2005."

While these numbers at first appear large and impressive, they are irrelevant. In fact, Finance's lawyers made auditors well aware of the law's eight-year statute of limitations for collections. (See New York City Charter § 1404 d (1)(g).) That is, any ECB debt prior to the year 2000 is legally uncollectible, so it is unclear why auditors would even consider 23-year old violations in their research.

- On page 7, the draft audit notes that auditors looked at debtors with debts above \$100,000 and then states that "although one respondent had a total of \$149,110 in fines listed in [the database], the actual balance due was only \$83,080. Nonetheless, we decided to keep this respondent in the sample."

Finance questions why any respondent that does not meet a sample's basic stated criteria would be kept in said sample.

Graham ECB Collections Draft Audit Response Letter  
MD08-071A, page 3

- On page 7, the draft audit notes that in investigating the companies in the sample, auditors reviewed the New York Department of State website to see “whether respondents were active companies.”

Finance would only note that to be “an active company” with the Department of State, a business has met only the very lowest of hurdles. As our Collections unit already regularly does, we hope auditors would research using resources that identify those businesses that are *currently* doing business and have collectible assets.

- On page 16, the draft audit addresses the collectability of “Owner of...” violations, noting that “[Finance] could not provide us with any written document that communicated” the agency’s concerns to ECB or Buildings.

The difficulty of collecting “Owner of” violations has been widely discussed since at least 2000 among city agencies. In those discussions, the Buildings Department, the main issuing agency and the Law Department, which legally represents all issuing agencies, have agreed that the City has had and will continue to have very limited success in pursuing debt when the party that owns a property is not specifically named in the violations.

Because of this long history and legal precedent, it is simply baffling for the draft audit to criticize Finance for not being able to produce documentation that shows our “concerns” with the ongoing and well-established state of affairs around the issuance of “owner of...” violations.

### Recommendations and Finance Responses

As discussed above, given that so many of the draft audit’s recommendations were completed by Finance both before and during the course of this audit, we have added a third category to the standard “agrees” and “disagrees” responses below: “Completed.” We have also tried to give some further context, as well as correct other errors.

1) *Ensure that dunning letters are sent to all respondents.*  
Completed; please do note that if upon research, Finance cannot find a proper owner at a given address, Collections has not and will not send dunning letters to incomplete addresses or, as discussed above, “owner of...” addresses.

2) *Ensure that adequate searches are performed to find telephone numbers for all respondents.*  
Completed.

3) *Track returned mail and identify respondents with incomplete information in order to obtain the missing or inaccurate information by*

Graham ECB Collections Draft Audit Response Letter  
MD08-071A, page 4

*either making a request to ECB or [Buildings] for the information or by conducting its own search.*

Finance agrees. We are in the process of using the Postal Service's address-change service, and expect that to be incorporated into our processing of return-mail and incomplete addresses.

- 4) *Establish formal procedures and criteria to identify and select cases for additional collection attempts.*

Completed as part of aforementioned conversion.

- 5) *Ensure that it adheres to its own internal collection procedures and documents these efforts.*

Completed as part of aforementioned conversion.

- 6) *Contact ECB to obtain prior payment information in an attempt to identify bank accounts of respondents in order to send execution letters to seize assets.*

Finance agrees. We will more actively encourage and welcome all relevant and complete payment data, including bank account information, from ECB when it transmits respondent information to us.

- 7) *Determine whether the bank accounts are viable for the 15 respondents...for whom execution letters were not sent to the banks and for whom we identified banks from prior payment information at ECB.*

Finance agrees. As stated above in #6, we are hopeful that going forward, ECB will be providing Finance the same bank account information for respondents that it was able to provide auditors.

- 8) *Create a checklist to aid in its collection efforts to ensure that all required collection procedures are taken and documented. If viable, attempt execution against them.*

Completed, as noted in #5 above, as part of aforementioned conversion.

- 9) *Monitor and document the review of collection efforts of each case to ensure that all necessary steps are taken in a timely manner.*

Completed, as noted in #5 and #8 above, a checklist was created as part of aforementioned conversion.

- 10) *Continue to document its difficulties written to "Owner of..." until the condition is resolved. In the meantime, [Finance] should consolidate ["owner of" violations] by address and identify those with high dollar amounts, then request to have the judgments modified and placed against the correct party*

Graham ECB Collections Draft Audit Response Letter  
MD08-071A, page 5

Finance disagrees. As noted above among misrepresentations, there is no simple resolution of “owner of” violation problems. Consolidation of violations by address assumes that the same entity is the owner of the property during the time when the violations have accrued. In fact, the owner of a particular property may change and consolidating violations by address will not help resolve the debt.

*11) Document...its concerns and difficulties with collecting on violations written to respondents with name variations...When a viable asset is identified, [Finance] should attempt to have the judgments modified to the correct spelling of a respondent's name.*

Finance disagrees. The agency is not authorized under the law to amend any judgment.

*12)[Finance] officials should ensure that docketed cases are sent and received in a timely manner to allow [Finance] the time needed to make necessary collection efforts.*

Completed as part of aforementioned conversion.

*13)[Finance] officials should review cases that were not received in a timely manner and conduct additional collection efforts....*

Completed as part of aforementioned conversion.

*14)[Finance] officials should use the contract with its collection agency in order to assist in its fine collection efforts for ECB-DOB violations.*

Completed. Finance has active contracts with two different collection agencies, Universal and Allied, which already aid us in these efforts.

*15)[Finance] officials should consider legislative changes that would allow for additional enforcement capabilities to assist agencies in their collection efforts. In addition, [Finance] officials should consider initiating a project...to deny permits to respondents with open and outstanding violations.*

Finance disagrees that advocating changes to the law is our agency's proper role here. We are only the collection agency for these violations, and so we always have and will continue to defer to our sister *enforcement* agencies in their recommendations on increasing “enforcement capabilities.”

*16)[Finance] officials should track...violation fine payments that result specifically from its collection efforts to determine the collection rate so as to monitor the effectiveness of [Finance] collection procedures.*

Completed as part of aforementioned conversion. In fact, a tracking sheet for ECB Building Code violations was provided to auditors after the exit conference.

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17. *ECB should generate a sync report when transferring docketed cases to [Finance] to ensure that [Finance] receives all cases.*

ECB will respond to this recommendation.

### Final Thoughts

While I know it is easier for a given audit team to look at problems from a compartmentalized agency-focused perspective, that may not be enough. In some cases, an inter-agency, more holistic perspective would be more helpful to address underlying problems. In fact, as the discussion of “owner of” violations above suggests, such an approach might have been most helpful in this audit.

I found it especially ironic that during the period the auditors were looking at, a State Supreme Court decision was issued addressing the fact that many ECB violations were served poorly; in fact, because of that poor service to the petitioner in the case, all of the violations were ordered vacated. (*Fieldbridge vs ECB*, Index #9335/08, June 23, 2008) That decision, which is critical to the matter being examined by your auditors, goes completely unmentioned in the audit. Given that the Fieldbridge Association was the petitioner in the case and is one of the draft audit’s 25 sampled respondents, the oversight is particularly notable.

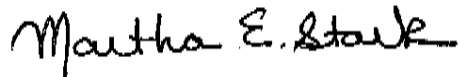
The court’s decision in the Fieldbridge case is quite clear: New York City cannot deter behavior if people don’t know what offenses have been committed. Finance believes that for all violations, the person who committed the offense has a right to know what the offense was and when it occurred. That’s the only way they’ll be able to correct the offense. A respondent shouldn’t first learn of the offense at the very end of the process when Finance is trying to collect. The draft audit loses sight of why ECB violations are issued in the first place: violations are not issued for the money, but to deter behavior.

New York City must do all that it can to improve the accuracy of issuance and notice up front. And an audit that recognizes the direct correlation within all elements of the process, from issuance to collection, would help all involved agencies provide enforcement of critical laws that is both fair and effective.

Once again, thank you, and please get back to me or Finance’s External Audit Coordinator, Chris Browne, if you have any further questions regarding this response.

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Sincerely,



Martha E. Stark

- C: Rochelle Patricof, First Deputy Commissioner  
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