

AUDIT REPORT

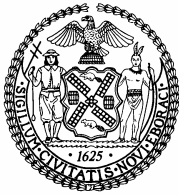


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Department of Consumer Affairs Internal Controls over The Processing of Violations and Collection of Fines

MJ06-113A

June 18, 2007



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 Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has examined the internal controls over the processing of violations and the collection of fines at the Department of Consumer Affairs (DCA). The audit covered Fiscal Year 2005.

DCA administers and enforces the City's Consumer Protection Law, City and State Weights and Measures Laws, City License Laws, and Tobacco Laws. DCA investigates deceptive trade practices, conducts administrative hearings, mediates consumer complaints, pursues large-scale litigation, performs research, and educates the public about consumer issues. Audits such as this provide a means of ensuring that DCA correctly processes violations and makes adequate efforts to collect all funds due the City.

The results of our audit, which are presented in this report, have been discussed with DCA officials, and their comments were considered in the preparation of 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 or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

Report: MJ06-113A
Filed: June 18, 2007

Table of Contents

AUDIT IN BRIEF	1
Audit Findings and Conclusions	1
Agency Response.....	2
INTRODUCTION	3
Background.....	3
Objective	4
Scope and Methodology	4
Discussion of Audit Results.....	7
FINDINGS AND RECOMMENDATIONS	9
Limited Effectiveness of Adjudication and Collection Activities	10
Adjudication Activities	11
Collection Unit Activities	12
Lack of External Collection Efforts.....	13
Recommendations.....	14
Large Fines for Unlicensed Activity Go Uncollected.....	14
Recommendations.....	17
Inefficient Performance of Adjudication and Collection Tasks	18
DCA Has No Milestones for the Performance of Tasks.....	18
Information Not Consistently Recorded in Case Records	19
Case Files Not Adequately Tracked	19
Consolidated Payment Plan Agreement Terms Not Enforced.....	20
Dunning Letter Errors and Inconsistencies.....	20
Recommendations.....	21
\$345,775 Gross Misstatement of Fines.....	22
Undetected Calculation Errors.....	22
Delays in Posting Payments and Adjustments.....	23
Uncorrected Credit Balances	23
Recommendations.....	24
Weakness in Accounts-Receivable Controls over Unpaid Fines.....	24
Monthly, Aged Accounts-Receivable Fine Reports Are Not Required.....	25
Lack of Methods to Estimate Collectible Fines	25
No Write-Off Policy	26
Recommendations.....	27
Lack of Written Policies and Procedures.....	28
Recommendation	29

APPENDIX

ADDENDUM: DCA Response

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

**Audit Report on the
Department of Consumer Affairs
Internal Controls over the
Processing of Violations and Collection of Fines**

MJ06-113A

AUDIT IN BRIEF

This audit determined whether the New York City Department of Consumer Affairs (DCA) maintains adequate internal controls over the processing of violations and collection of fines. DCA administers and enforces the City's Consumer Protection Law, City and State Weights and Measures Laws, City License Laws, and Tobacco Laws. DCA promulgates consumer protection regulations, investigates deceptive trade practices, conducts administrative hearings, mediates consumer complaints, pursues large-scale litigation, performs research, and educates the public about consumer issues. DCA also licenses more than 60,000 businesses in 55 different industries, ranging from home improvement contractors, electronic stores, and tow companies to sidewalk cafés, newsstands, and locksmiths.

Audit Findings and Conclusions

DCA did not maintain adequate internal controls over the processing of violations and collection of fines and lacks adequate controls over its accounts receivable. Also, DCA did not have formal written policies and procedures to comprehensively address and establish standards for all aspects involved in the adjudication and collection of fines. The lack of strong controls led to operational inefficiencies and procedural weaknesses in the performance of Adjudication and Collections functions.

As of July 29, 2006, these weaknesses contributed to fines totaling \$28.3 million remaining unpaid of the total \$68.5 million assessed and reflected in the DCA computer data for the period January 1, 2000, through July 29, 2006. Nearly two-thirds (\$18.6 million) of these unpaid fines were assessed against unlicensed home improvement contractors and, to a lesser extent, unlicensed tow operators and other unlicensed entities.

Nevertheless, the audit determined that DCA maintained adequate controls to provide reasonable assurance that cash receipts collected for fines were appropriately accounted for, safeguarded, and recorded in the City's financial records. Further, DCA internal controls were

adequate to ensure that respondents whose licenses are expired, revoked, or suspended will not be reinstated or renewed while fines remain unpaid.

Audit Recommendations

To address these issues the audit made 17 recommendations. Among them, we recommend that the DCA should:

- Establish controls to ensure that Adjudication and Collections tasks are performed in a consistent, timely, and efficient manner. These controls should include milestones for the performance of Adjudication and Collections tasks and criteria to measure the efficiency and effectiveness of these tasks. They should also include procedures to ensure that required information is appropriately and consistently recorded in respondent case records (paper or electronic), and that the status and location of case files are adequately tracked as they move from Adjudication to Collections.
- Ensure that assessed fines imposed by hearing officers or administrative law judges are verified for accuracy prior to the amounts being recorded in CAMIS and the decision being mailed to the respondents.
- Require the periodic reporting, review, investigation, and resolution of violations and payments to ensure that payments are appropriately posted in CAMIS in a timely manner.
- Comply with Comptroller's Directive #21 by developing procedures to report its accounts-receivable balance monthly, identify or estimate and write-off fines deemed uncollectible, and report its write-off procedures, along with any write-off amounts, to the Comptroller's Office.
- Develop a comprehensive policies and procedures manual that addresses all internal processes and functions throughout the agency and distribute the manual to appropriate DCA departments and personnel. The manual should be updated periodically to address newly implemented or restated procedures.

DCA Response

Of the 17 recommendations made in this report, DCA generally agreed with 13, partially agreed with three, and generally disagreed with one. The full text of the DCA response is included as an addendum to this report.

INTRODUCTION

Background

The mission of the New York City Department of Consumer Affairs (DCA) is to foster an honest market place and to protect consumers from deceptive and illegal trade practices. Accordingly, DCA administers and enforces the City’s Consumer Protection Law, City and State Weights and Measures Laws, City License Laws, and Tobacco Laws. DCA promulgates consumer protection regulations, investigates deceptive trade practices, conducts administrative hearings, mediates consumer complaints, pursues large-scale litigation, performs research, and educates the public about consumer issues. DCA also licenses more than 60,000 businesses in 55 different industries, ranging from home improvement contractors, electronic stores, and tow companies to sidewalk cafés, newsstands, and locksmiths.

To ensure compliance with the various laws and regulations under DCA jurisdiction, the DCA Enforcement Division routinely conducts inspections of businesses throughout the five boroughs. DCA inspectors and the New York City Police Department (NYPD) are empowered to issue violations for infractions of DCA-administered laws, rules, and regulations. The DCA Consumer Complaint Division may also issue violations based on a consumer complaint. Violations can be served either in person or by mail. Depending on the statute violated and the violators’ recidivist (repeat violator) status, fines can range, for example, from \$100 to \$350 for failing to conspicuously display a locksmith license to \$100 a day for conducting unlicensed home improvement activity.

Each violation is assigned an appearance date at the DCA Adjudication Center (Adjudication). If a personal appearance is not required, a respondent can forgo appearing, plead guilty, and pay a reduced fine (pleading amount) that is specified in a “pleading letter” sent to the respondent prior to the scheduled appearance date. Otherwise, the respondent must appear as scheduled.¹

On the day of the scheduled appearance, for cases involving License Law, State Weights and Measures Law, and other “hearable” violations, the respondent may either meet with a Settlement Officer to settle the case or appear before an Administrative Law Judge (ALJ) who will hear the case and render a decision. In general, cases involving violations of Consumer Protection Law and City Weights and Measure Law are “non-hearable” violations and are handled by a Settlement Officer.² For respondents who appear at Adjudication on or before the scheduled appearance date, unless the case is dismissed or the hearing rescheduled, the case will either be heard by an ALJ or be resolved by a Settlement Officer who will assess applicable fines

¹ Violations involving unlicensed activity are not automatically offered a pleading amount. Instead, the respondent is required to appear in person at the DCA Adjudication Center where the case may either be heard by an ALJ or settled.

² DCA is not empowered by statute to conduct administrative hearings for violations of City Weights and Measures Law and Consumer Protection Law, except for charges related to DCA licensed business activity.

against the respondent.³ If the respondent fails to appear as scheduled, a default order is entered and a fine imposed (up to the allowed maximum). The respondent is notified by mail.

Adjudication personnel record all case dispositions and other information in the DCA City Agencies Management Information System (CAMIS) database and send all payment receipts along with corresponding support documentation to the Collection Unit (Collections) for processing. Adjudication is also responsible for notifying respondents by mail of case dispositions. According to DCA officials, for hearable cases a notification (decision order) is sent within 30 days from the close of the hearing file informing the respondent of the decision, the imposed fine, and the respondent's rights and procedures to appeal the decision. The respondent has 30 days to either pay the fine or appeal the decision. Cases involving non-hearable violations are sent to Collections, which sends a letter notifying the respondent of the fine amount and demanding payment within 10 days. All closed case files, including those for which the violation is dismissed, settled, or a decision order rendered and a fine assessed, are sent to Collections for further processing and filing. Unless sent to the Litigation and Mediation Unit, case files that remain open (adjourned or appealed) are generally retained by Adjudication.

Collections is responsible for posting all payment receipts, administering payment agreements, and maintaining all closed case files. In addition, Collections personnel are responsible for securing payment from respondents who fail to pay their fines through dunning notices and telephone calls.

Unless the violation is dismissed or appealed, DCA requires that respondents pay their fines. For those violations that have not been paid, dismissed, or appealed, DCA may deny approval or renewal of the respondent's license until all outstanding fines are paid. DCA can also padlock or seize assets of unlicensed businesses. Further, DCA may institute court proceedings against entities with unpaid fines to obtain a judgment.

During Fiscal Year 2005, DCA assessed fines totaling \$12.5 million on 11,147 violations. During the same year, DCA collected approximately \$8.8 million for fines assessed in Fiscal Year 2005 and prior years.

Objective

The objective of this audit was to determine whether DCA maintains adequate internal controls over the processing of violations and collection of fines.

Scope and Methodology

The audit scope covered fines assessed for Fiscal Year 2005 (July 1, 2004, through June 30, 2005). To accomplish our objective, we carried out the following procedures.

To gain an understanding of DCA powers and responsibilities related to the processing of violations and collection of fines, as well as the laws and regulations the agency is empowered to

³ The fine amounts imposed by Settlement Officers are fixed amounts (generally reduced fine amounts) that DCA is willing to accept from respondents who agree to plead guilty and settle a violation.

enforce, we reviewed: the New York City Charter, Chapter 64; the New York City Administrative Code, Title 20; the Rules of the City of New York, Title 6; the Consolidated Laws of New York, Agriculture & Markets—Article 16, “Weights and Measures”; the Unconsolidated Laws of New York: Cigarettes—Cigars and Tobacco; and DCA rules and regulations. In addition, the Mayor’s Management Report, the Executive Budget, and other relevant information obtained from the DCA Web site and other sources were reviewed.

To gain an understanding of and evaluate the manual and automated processes and controls involved in the processing and adjudication of violations and the collection of fines, we reviewed the DCA self-assessment of its internal controls covering Calendar Years 2004 and 2005, performed in compliance with New York City Comptroller’s Directive #1 and submitted to the Comptroller’s Office. We also reviewed DCA policies and procedures, organization charts, and operational flow diagrams; interviewed DCA officials and staff from the Collections, Adjudication, and Litigation-Mediation Divisions; and conducted walkthroughs and observations of the Collections and Adjudication units. Our evaluation included observations of the handling and processing of cash receipts at the Collections and Adjudication sites⁴ and a review of the safeguards and controls over cash.

Tests of Data Reliability and Completeness

An electronic file detailing the population of 11,147 violations with fines totaling \$12.5 million assessed in Fiscal Year 2005 was requested and obtained. We also obtained read-only access to CAMIS. To verify the reliability and the completeness of the data in CAMIS, we selected 50 violations from DCA case files and compared information from corresponding source documentation (i.e., respondent’s name and address, violation number, violation type, and fine amount) to the data reflected in CAMIS. The results of these tests, while not projectable, provided reasonable assurance of the reliability of data in the CAMIS database for audit sample selection and testing purposes. Additional data reliability testing was incorporated into analytical tests conducted on 156 sampled violations (discussed below).

We also requested and obtained a copy of data from selected fields for all records in CAMIS from January 1, 2000, through the close of business on July 29, 2006, and applied computer-assisted audit techniques to assist in our review. The Comptroller’s Information Technology Audit Group evaluated the CAMIS dataset to determine its reliability for audit testing purposes and generated various reports to determine the total amount and age of outstanding fines by violation type as reflected in the data as of July 29, 2006 (shown in the Appendix).

Test of Controls over the Processing of Violations and Collection Activities

From the population of 11,147 violations with fines assessed in Fiscal Year 2005, a sample of 156 violations with total fines of \$1.56 million was selected, consisting of 137 violations randomly selected from the population with fines totaling \$112,138, and 19 violations with the largest fines (totaling \$1.45 million) for each violation type were targeted and selected

⁴ DCA Collections at 42 Broadway, 8th floor, Manhattan, and DCA Adjudication at 66 John Street, 11th floor, Manhattan.

from the same population, without duplication. The results of tests involving these sampled violations were not projectable to the respective population due to the variability of fines and the varied legal statutes associated with violations. Nevertheless, such results provided a reasonable basis for us to assess the adequacy of DCA's controls over processing and collection activities.

To evaluate the appropriateness of the DCA's processing of the 156 violations in our sample, we reviewed the original source documentation (violations, pleading letters, decisions, etc.) and the respondent CAMIS accounts associated with the sampled violations. We also determined whether the processing of violations and procedures applied in the collection of fines complied with DCA policies and procedures, Comptroller's Directives, and applicable statutes.

Evaluation of the Effectiveness of Adjudication and Collection Activities

We evaluated the processes that affect the collection of fines and the activities employed to encourage payment of fines, and measured the efficiency and effectiveness of those processes and activities in terms of the number of violations and total fines collected. For the purpose of our evaluation, all processes that affect and activities that contribute to the collection of fines as part of the DCA framework, including the Notice of Violation/Hearing (NOV/H) that initiates proceedings, along with Adjudication, Collection, and Litigation Unit activities, were considered.

We analyzed the case files and electronic records for the 156 sample violations, determined their payment status as of February 10, 2006, (118 paid or partially paid and 38 unpaid), and identified the collection activities that DCA employed in each case. We determined whether those activities were carried out in a timely fashion and were effective in securing payment of the assessed fines. In addition, using the data provided by DCA for the period January 1, 2000, through July 29, 2006, the total amount of fines, collections, and unpaid fines corresponding to the various violation types and revenue codes used by DCA to record such information was analyzed.

We also evaluated the administration of DCA payment agreements and reviewed the January 2006 DCA Consolidated Payment Program billing statements.⁵ Further, we identified respondents from our sample of 156 violations that were past or current DCA licensees and determined whether DCA had renewed or suspended the licenses of respondents with outstanding, unpaid fines. Lastly, we determined whether external collection activities are employed after all internal collection activities are exhausted.

Test of Accounts-Receivable Controls

To evaluate DCA controls over accounts receivable, the DCA procedures for managing, aging, reporting, and estimating the collectibility of outstanding, unpaid fines and for writing-off uncollectible fines were assessed. We determined whether the assessed fine amounts and related

⁵ DCA offers a Consolidated Payment Program that allows certain business entities (primarily supermarket and drug store chains) that operate at multiple locations throughout the City and accumulate numerous violations to address the violations and pay reduced fines efficiently. Currently, there are 25 entities (comprising some 1,027 stores) that have entered into consolidated payment agreements with DCA.

payments and adjustments were appropriately recorded in CAMIS. We also identified and reviewed all 39 accounts with credit balances as of February 10, 2006, and determined the causes and appropriateness of those amounts.

Audit Criteria

To assess DCA internal controls over the processing of violations and collection of fines, the following sources were used as audit criteria: Comptroller's Directive #1, "Principles of Internal Control"; Comptroller's Directive #11, "Cash Accountability and Control"; and Comptroller's Directive #21, "Revenue Monitoring." In addition, to evaluate the reliability and integrity of the DCA computer-processed data as it pertains to the tracking and accounting of imposed fines, the following sources were used as audit criteria: Comptroller's Directive #18, "Guidelines for the Management, Protection and Control of Agency Information and Information Processing Systems" and U.S. General Accounting Office Publication GAO-03-273G, *Assessing the Reliability of Computer-Processed Data*, issued October 2002.

Further, we reviewed previous audits of DCA conducted by the Comptroller's Office, along with audits carried out by the DCA internal audit group and noted findings and conditions in those audits that addressed our audit objectives or other matters relevant to this audit.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the New York 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 DCA officials during and at the conclusion of this audit. A preliminary draft report was sent to DCA officials and discussed at an exit conference held on February 9, 2007. We submitted a draft report to DCA officials with a request for comments on March 8, 2007. We received a written response from DCA officials on March 23, 2007. Of the 17 recommendations made in this report, DCA generally agreed with 13, partially agreed with three, and generally disagreed with one.

In its response, even though DCA generally agreed with most of the audit recommendations, it attempted to minimize the importance of the audit's overall finding that the agency lacks adequate internal controls over the processing of violations and collection of fines. DCA stated:

"While the Department recognizes the usefulness of certain recommendations contained in the audit, we are concerned that many of the report's conclusions are exaggerated and misleading, and consequently fail to recognize a significant portion of the work conducted by the Department of Consumer Affairs."

To bolster its viewpoint, DCA offered contrived arguments and contentious language. For example, in addressing the outstanding, unpaid fines of \$28.3 million found in the CAMIS data, DCA argued:

“We are concerned that the methodology employed in this audit appears to have skewed its conclusions. Of the 11,147 violations assessed by DCA in FY’05, the report examined 156 violations, 19 of which were chosen based on the large size of the fine. These 19 subjectively chosen violations represent a whopping \$1.45 million (93%) of the total \$1.56 million in assessed fines in the sample. This subjectively chosen data substantially unbalances the sample so that it cannot be extrapolated to the larger universe of 11,147 [violations with] fines assessed in FY’05.”

DCA is incorrect in stating that the audit’s methodology skewed its conclusions. Rather, for materiality purposes, it was proper to ensure that violations assessed larger monetary fines were selected to evaluate the overall impact and effectiveness of DCA’s collection efforts. While the quantity of violations for which fines are collected is important, of more importance is the actual amount of the fines collected. It is to be expected that DCA would expend more time and resources to collect a \$10,000 fine than it would to collect one for \$100. Accordingly, to select a sample without regard to the monetary fine amounts would be inappropriate and result in “skewed” conclusions. Regarding the accuracy of the report, DCA stated:

“The report appears to contain numerous mathematical errors, which call into question the completeness of some of the report’s analysis and conclusions. Instead of discussing them here, we are available to resolve these inaccuracies.”

However, when we contacted DCA to get clarification of these “numerous mathematical errors”, we determined that they were not errors at all but three minor points for which further explanation was provided in the report.

Even though we shared extensive audit information and analysis with DCA officials during the audit and after the exit conference, DCA management has been resistant to accept the findings disclosed herein. It is encouraging to note, however, that they generally agreed with almost all of our 17 recommendations, which indicates that they recognize the need to improve. It is our hope that DCA management will view the audit as the helpful tool it is intended to be, one that highlights operational weaknesses and suggests ways to strengthen DCA operations and to enhance the processing of violations and collection of fines.

The full text of the DCA response appears as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DCA does not maintain adequate internal controls over the processing of violations and collection of fines. The lack of strong controls led to operational inefficiencies and procedural weaknesses in the performance of Adjudication and Collections functions. Although DCA has a framework of business practices (including Adjudication, Collections, and Legal activities) to encourage respondents to pay fines, these practices are limited in their ability to recoup fines from respondents, especially from those respondents found guilty and assessed fines for carrying out unlicensed activity, most notably unlicensed home improvement contractors.

Nevertheless, we did determine that DCA maintained adequate controls to provide reasonable assurance that cash receipts collected for fines were appropriately accounted for, safeguarded, and recorded in the City's financial records. Further, DCA internal controls were adequate to ensure that entities whose licenses are expired, revoked, or suspended will not be reinstated or renewed while it has unpaid fines.

DCA would increase its ability to collect fines by addressing inefficiencies and weaknesses that contribute to the limited effectiveness of the DCA collection activities. These weaknesses contributed to fines totaling \$28.3 million of the total \$68.5 million assessed and reflected in CAMIS data for the period January 1, 2000, through July 29, 2006, remaining unpaid as of July 29, 2006. Nearly two-thirds (\$18.6 million) of the total unpaid fines as of July 29, 2006, were assessed against unlicensed home improvement contractors and to a lesser extent unlicensed tow operators and other unlicensed entities.

DCA Response: "The \$28.3 million is overstated because it includes fines which could not possibly have been collected within the same period. Reporting on fines assessed through July 29, 2006 as well as fines collected in that same period makes it impossible that all assessed fines would have an opportunity to be collected; for example, a fine assessed on July 28, 2006 would not be collected by July 29, 2006."

Auditor Comment: DCA's statement is incorrect; all of the assessed fines had an opportunity to be collected. Each of the fines that were outstanding as of July 29, 2006 was at least one month old; \$25.4 million (90%) represented fines that were at least three months old.

In addition, while CAMIS data was determined reliable for audit purposes, the procedural weaknesses combined with a lack of controls designed to prevent or detect errors led to a gross misstatement of \$345,775 in fines recorded in CAMIS for the 156 sampled violations and to erroneous credit balances posted to 21 other respondent accounts. While these results were not projectable to their respective population, they provided sufficient evidence to indicate that similar errors and misstatements are included in CAMIS. Therefore, we could not be assured of the accuracy of the \$28.3 million in outstanding fines from January 1, 2000, through July 29, 2006, as reflected in CAMIS data.

Moreover, DCA lacks adequate accounts-receivable controls. Specifically, DCA does not require the monthly aging and reporting of outstanding fines receivable, does not have a write-off policy, nor does it uniquely identify uncollectible fines in CAMIS or have a method to evaluate the collectibility of unpaid fines as required by Comptroller's Directive #21. Consequently, DCA management could not be assured of the accuracy or collectibility of unpaid fines reflected in CAMIS. Further, DCA lacks formal written policies and procedures to comprehensively address and establish standards for all aspects involved in the adjudication and collection of fines. These matters are discussed in the following sections of this report.

Limited Effectiveness of Adjudication and Collection Activities

While DCA has a framework of activities to encourage respondents to pay their fines, collectively, these activities are limited in their effectiveness to recoup the total amount of assessed fines. Of the \$1,564,452 in fines imposed against the 156 sampled violations, DCA collected \$317,601 (20.3%) for 118 (75.6%) violations (109 paid and 9 partially paid). The remaining \$1,242,515 (79.4%) of fines associated with 38 (24.4%) unpaid violations and the balance of \$4,336 for 9 partially paid violations remained uncollected and outstanding as of February 10, 2006.⁶

DCA Response: “The report identifies \$309,400 in fines that were assessed erroneously based on two data entry errors. While DCA has modified its systems to avoid these mistakes in the future, the report includes these erroneously assessed fines in the total uncollected fines from the sample of 156 violations, thereby overstating the amount of uncollected fines by one-third.”

Auditor Comment: We used the assessed fines that appeared in DCA records as of February 10, 2006, in our evaluation of Adjudication and Collection activities to collect fines associated with the 156 sampled violations. These amounts were included in our evaluation because the initially assessed fines were a matter of legal record. Specifically, the erroneous fine amounts were rendered by a DCA ALJ, recorded in CAMIS, and included in the written decision orders that were mailed to the respondents.

We assessed the effectiveness of Adjudication and Collection Unit processes and activities that collectively resulted in the collection of \$317,601 and found that these activities vary, but overall are limited in their ability to secure payment of fines from respondents, especially from those respondents found guilty and assessed large fines for carrying out unlicensed activity. The results of our assessment are discussed below

⁶ The \$1,246,850 in unpaid fines for 38 violations includes \$309,400 overstatements discussed later in this report.

Adjudication Activities

The NOV/H serves as the document of record on which all adjudication and collection activities are based. Once issued by DCA Enforcement, the NOV/H, along with the pleading letter and decision order, are processed by the DCA Adjudication Center.

As reflected in Table I below, overall, Adjudication activities resulted in 82 (52.5%) of the 156 sampled violations being paid or partially paid. In terms of fines, DCA collected \$48,830 (3.1%) of the total \$1,564,452 of fines corresponding to the 156 sampled violations.

Table I

Effectiveness of Adjudication Activities in Relation to the Overall Collection of Fines
For 82 of 156 Sampled Violations as of February 10, 2006

Collection Activity	Violations				Fines			
	(a) Number of Violations Paid or Partially Paid	(b)** Total Violations	(c) <i>Percent of Violations Paid or Partially Paid</i> (Col a/ Col b)	Paid Violations as Percent of 156 Total Sampled Violations (Col a/156)	(d) Total Fine Amounts Paid or Partially Paid in relation to (a)	(e) Total Fines Assessed for Violations (in relation to (b)	(f) <i>Percent of Paid Fines</i> (Col d/ Col e)	Paid Fines as a Percent of \$1,564,452 Total Sampled Fines
Notice of Violation or Hearing*	27	105	25.7%	17.3%	\$7,630	\$243,704	3.1%	0.5%
Pleading Letter *	43	78	55.1%	27.5%	\$26,100	\$236,074	11.1%	1.7%
Decision order	12	86	14.0%	7.7%	\$15,100	\$1,530,722	1.0%	0.9%
Total	82	-----	-----	52.5%	\$48,830.00	-----	-----	3.1%

Note: * Pleading amount applicable to these violations.

**Total violations vary for each activity.

Of the 82 violations for which fines were collected, the NOV/H and pleading letter proved to have the highest response rate of Adjudication activities in terms of the number of violations. In general, these violations carry small fine amounts; therefore, there is a greater likelihood of DCA's collecting such fines. On average, the 82 paid or partially paid sampled violations carried a fine of \$595 per violation.

The remaining 74 sampled violations, with fines totaling \$1,515,622, remained unpaid. Thirteen of these violations, with fines totaling \$249,587, were handled by the DCA Litigation and Mediation Division and subsequently collected. Generally, these cases involve matters that affect a large number of consumers and involve total damages in excess of \$10,000. The other 61 violations, with fines of \$1,266,085, were forward to Collections for handling. In many of these cases, default decision orders were rendered and fines were imposed because the respondents failed to appear at Adjudication.

Collection Unit Activities

For violations with imposed fines, Adjudication sends the case files, including the NOV/H, the decision, supporting documents, and any corresponding payments to Collections. For unpaid violations forwarded by Adjudication, Collections representatives employ dunning letters in attempts to secure payment from respondents. Collection representatives may also attempt to reach respondents by telephone. In addition, Collections administers payment agreements.

As reflected in Table II below, overall, Collections activities resulted in 20 (13%) of the 156 sampled violations being paid. In terms of fines, the 20 paid or partially paid violations resulted in DCA's collecting \$18,995 (1.21%) of the \$1,564,452 of total fines associated with the 156 violations in our sample.

Table II

Effectiveness of Collections in Pursuing and Collecting Fines
For 20 of 156 Sampled Violations as of February 10, 2006

	Violations				Fines			
	(a)	(b)	(c)	Paid	(d)	(e)	(f)	Paid Fines
Collection Activities in Pursuit of Payment of Fines	Number of Violations Paid or Partially Paid	Total Violations*	Percent of Violations Paid or Partially Paid (Col a/ Col b)	Violations as Percent of 156 Total Sampled Violations (Col a/156)	Total Fine Amounts Paid or Partially Paid in relation to (a)	Total Fines Assessed for Violations in relation to (b)	Percent of Paid Fines (Col d/ Col e)	as a Percent of \$1,564,452 Total Sampled Fines
Dunning Notices	4	61	6.6%	2.6%	\$8,350	\$1,266,035	0.7%	0.5%
Telephone Calls	0	2	0%	0%	\$0	-----	0%	0.0%
Installment Payment Agreement	9	9	100%	5.8%	\$8,795	12,800	68.7%	5.6%
Consolidated Payment Agreement	7	7	100%	4.5%	\$1,850	\$1,850	100%	0.1%
Total	20	-----	-----	12.90%	\$18,995	-----	-----	6.2%

Note: * Three of the sampled violations were not included in this analysis as two had undetermined credits and one was not assessed a fine.

Of the 20 violations for which fines were collected through Collections activities, installment and consolidated payment agreements had the highest response rate in terms of the number of violations. In general, these violations also carried relatively small fine amounts, making it more likely that DCA would collect these fines. On average, the 20 paid or partially paid sampled violations that respondents paid as a result of Collections activities carried a fine of \$950 per violation.

As of February 10, 2006, of the \$1,564,452 in fines imposed against the 156 sampled violations, the fines of \$1,242,515 (79.4%) for 38 (24.4%) violations remained unpaid and uncollected.

In terms of violations, the DCA practices appear to be successful in encouraging respondents to pay their fines. However, in terms of fines overall, these activities are limited in encouraging respondents to pay fines, especially respondents found guilty and assessed large fines for carrying out unlicensed activity. In many of these cases, default decision orders are rendered and fines imposed up to the maximum allowed amount are imposed because the respondents fail to appear at Adjudication.

At the exit conference on February 9, 2007, DCA officials asserted that the inclusion of Adjudication processes and activities in our evaluation was incorrect because “the collection of unpaid fines is not a function of Adjudication.” While we agree that Collections, not Adjudication, is responsible for collecting unpaid fines, Adjudication processes and activities are functions of DCA’s ability to collect fines and therefore is appropriately included in our evaluation.

While DCA works to accomplish its mission to foster an honest market place and to protect consumers, it is limited in its ability to persuade individual respondents to pay fines. Nevertheless, we determined that DCA could do more to enforce fines imposed against respondents. For unpaid violations, Collection does little more than send out dunning letters. DCA collectors rarely attempt to contact respondents by telephone as a means of securing payment. We found that only one of the case files for 38 unpaid violations in our sample contained documentation to show that collection calls were made to respondents.

In addition, we identified weaknesses in procedures and controls that created inefficiencies that limited the agency’s ability to collect fines and to appropriately determine the amount and collectibility of outstanding fines. These matters are discussed in the remaining sections of this report.

Lack of External Collection Efforts

DCA does not employ outside collection agencies as part of its collection activities or refer uncollected respondent accounts to the Law Department for further collection activities. Also, DCA does not routinely pursue judgments against debtors in civil court to collect fines because of the costs involved in bringing such cases, according to DCA officials. Comptroller’s Directive #21 states that “once all internal collection methods have failed, overdue accounts should be transmitted to the Law Department for litigation or to an outside collection agency.”

Despite past attempts to obtain legislative authority, DCA is not empowered to automatically docket cases with the courts as are some other City agencies, such as the Department of Finance, the Environmental Control Board, and Parking Violations Bureau.⁷ Docketing power is an alternative means of obtaining judgments in order to use more powerful collection methods, such as income executions and bank levies. Nevertheless, DCA could, but does not, routinely seek judgments against violators with past due fines in the civil court.

⁷ Entities that are granted docketing power by law are empowered to automatically file judgments against debtors in the civil court and forego the court filings and proceedings that individuals and entities without docketing power must follow to obtain judgments against debtors.

According to DCA officials, the costs involved in taking legal action against debtors generally outweighs the potential financial benefits that would be realized. Therefore, cases are referred to Litigation on a case-by-case basis. Litigation may seek judgments against violators in the civil court. Under certain situations, DCA will transmit a case to the Law Department, but not necessarily for the collection of fines.

In the past, DCA employed an external collection agency to collect outstanding fines from debtors. According to DCA officials, the collection agency was not successful in recouping outstanding fines and made extensive requests of Collections that tied up DCA resources. Therefore, DCA ceased using the collection agency to collect fines.

Despite DCA's hesitation to use these external services, the use of alternative external services could enhance its rate of collections since it does not have the power to docket cases and infrequently pursues legal proceedings against debtors. However, to use these services, DCA needs to be assured of the quality of cases it would transmit to a collection agency. Specifically, the dollar amount of outstanding fines reflected in CAMIS must be accurate, and the information reflected in case files must be complete and up-to-date (discussed later). Through such a review of outstanding debtor files, DCA could more readily identify cases that are likely to result in collections by external agencies, once all internal DCA collection efforts have been exhausted.

Recommendations

DCA should:

1. Reevaluate the retention and use of an outside collection agency as part of its collection activities to recoup fines after internal efforts are exhausted.

DCA Response: DCA agreed.

2. Seek the passage of legislation that would give DCA the authority to docket its hearing decisions in the Civil Court.

DCA Response: DCA agreed.

Large Fines for Unlicensed Activity Go Uncollected

DCA imposes large fines against entities that are found guilty of performing unlicensed activity. Frequently, these violations are based on consumer complaints against unlicensed home improvement contractors as well as entities such as unlicensed tow operators and sellers of tobacco products. In many of these cases, default decision orders are rendered and fines (up to the maximum allowed amount) are imposed since the respondents fail to appear at Adjudication.

Since consumer complaints, especially those involving home improvement contractors, may be made several months or even years after the actual work was performed, if the complaint is substantiated and a violation issued, it usually involves a large fine. The fine is large because

it is calculated on a rate of up to \$100 for each day of “unlicensed activity,” measured from the date the unlicensed work was begun (as stated in the complaint) to the day the case is adjudicated.

Despite the hefty fines imposed against unlicensed parties, there is a strong likelihood that these fines will go uncollected because DCA fails to aggressively pursue the violators. As demonstrated in Table III below, 15 of the 38 unpaid sampled violations were issued to respondents for performing unlicensed activity and carried significant fines totaling \$1,197,600, representing 96.4 percent of the total \$1,242,515 in unpaid fines remaining outstanding for these 38 unpaid violations. Only three of the 15 respondents involved in these cases appeared at Adjudication. A default decision order was rendered and the maximum fine (\$100 per day) imposed against the remaining 12 respondents for the sampled violations issued for unlicensed activity.

Table III

Summary of 38 Unpaid Sampled Violations
By Violation Type as of February 10, 2006

Type of Violation	(a) Number of Violations	(b) Percent (%) of Violations (Col a ÷ 38)	(c) Fine Amount (\$)	(d) Percent (%) of Fine Amount (Col a ÷ \$1,242,515)
Consumer Law	10	26.3%	\$3,475	0.3%
License Law	4	10.5%	\$8,850	0.7%
Unlicensed Activity	15	39.5%	\$1,197,600	96.4%
Tobacco Law *	2	5.3%	\$9,000	0.7%
Weights & Measures Law*	7	18.4%	\$23,590	1.9%
Total	38	100.0%	\$1,242,515	100.0%

* Note: In addition to fines, New York State imposes surcharges for certain violations. We included these surcharges in our analysis of fines.

Eleven of these 15 unpaid, sample violations were based on consumer complaints issued to home improvement contractors for performing unlicensed activity, and carried fines of \$1.2 million. Available documentation from corresponding case files showed that seven of these 11 entities were served a NOH by mail. The case files for the remaining four entities did not contain evidence to show how the NOH was served or whether it was served at all. Since the respondents in these cases failed to appear on the scheduled hearing date, a default decision was entered and the fines (\$100 per day for each day of unlicensed activity) were imposed.

DCA is required to serve a respondent with a NOH prior to a scheduled hearing date. The law provides that notice by mail to the respondent’s last known address is sufficient. However, for cases in which the violator is charged with unlicensed activity, DCA would be better able to verify the respondent’s location, determine whether a violation can be served, and consequently, assess the collectibility of fines to be assessed if a DCA inspector were required to visit or contact the respondent in person as part of the investigation. In doing so, DCA could determine whether the party is still in business and if not, whether alternative activities should be

taken to contact or serve the respondent. If DCA is unable to locate an entity it will not be able to enforce collection of outstanding fines and ensure that unlicensed activity is not continuing.

Over time, the fines imposed for unlicensed activity represent the largest amount of fines that remain uncollected by DCA. As reflected in Table IV below (and shown in the Appendix), based on DCA provided CAMIS data for the period January 1, 2000, through July 29, 2006, fines assessed against violators for unlicensed activity represented \$27.5 million (40.1%) of all fines imposed by DCA.

Table IV

Status of Violations (Hearable and Non-Hearable) Issued and Fines Imposed
Reflected in CAMIS Data For the Period January 1, 2000, through July 29, 2006

Violation Type	(a) Total Fines Assessed (% of Total)	(b) Total Payments Collected (% of Total)	Number of Violations (% of Total)	(c) Balance of Unpaid Fines Col a- Col b (% of Total)
Unlicensed Activity	\$27,454,772 (40.1%)	\$8,872,212 (22.1%)	19,195 (23.6%)	\$18,583,560 (65.6%)
Tobacco Law	\$18,218,610 (26.6%)	\$14,325,996 (35.6%)	22,427 (27.5%)	\$3,892,614 (13.7%)
License Law	\$11,677,683 (17.0%)	\$8,419,522 (20.9%)	13,052 (16.0%)	\$3,258,162 (11.5%)
Consumer Law	\$6,153,405 (9.0%)	\$4,856,342 (12.1%)	8,876 (10.9%)	\$1,297,063 (4.6%)
Weights & Measures Law	\$5,019,569 (7.3%)	\$3,719,723 (9.3%)	17,879 (22.0%)	\$1,299,846 (4.6%)
Grand Totals	\$68,524,038	\$40,193,794	81,428	\$28,331,244

Note: The Appendix shows the aging of the outstanding fines reflected above.

As of July 29, 2006, \$18.6 million (65.6%) of the \$28.3 million in fines (reflected in CAMIS data) remaining outstanding for the period January 1, 2000, through July 29, 2006, were for unlicensed activity.

DCA Response: “Our tribunal cannot hear cases arising out of most violations issued under the Consumer Protection Law and Weights and Measures Law. Thus, we do not have judgments or orders compelling these entities to pay fines and our ability to exact payment is limited. Nevertheless, the audit’s findings fault DCA for not collecting these non-hearable violations. In fact, according to your report the categories encompassing most of these non-hearable violations (Consumer Law and Weights and Measures violations) account for over 15% of the fines assessed from 2000 to 2006. So while DCA is aggressively seeking hearing authority over these laws, the Agency’s only current recourse for non-hearable violations is to pursue the matter in State court. This type of action requires significant time and resources which are not commensurate with the nature of the violation or the fine that we would obtain in most cases. Thus, including

these types of fines in the total outstanding fines is misleading and does not reflect the limits of the Agency's legal authority."

Auditor Comment: DCA's assertion is without merit. If we had excluded any class or type of violations from our analysis, as DCA suggests, the results of our analysis would not have provided a complete assessment of DCA's fines-receivable nor the information appearing in the CAMIS data as of July 29, 2006. In fact, DCA reported a relatively high collection rate for non-hearable Consumer Law (CL) and Weights and Measures Law (WML) violations and associated fines. For the period January 1, 2000 through July 29, 2006, DCA reportedly collected \$4,385,359 (83%) of \$5,272,158 in fines assessed for non-hearable CL and WML violations. If we had omitted these non-hearable fines from our analysis, the overall percentage of fines reportedly collected by DCA for the period we reviewed would have *decreased*, from 59 percent to 57 percent.

During the audit, we became aware that DCA had taken measures to target 135 unlicensed home improvement contractors to settle their fines and obtain a DCA license. According to an agency press release, the targeted businesses were identified as a result of consumer complaints received between May 2006 and August 2006 and were being offered the opportunity to pay reduced fines if they obtained licenses and resolved all outstanding complaints. Since this was a new initiative undertaken by DCA, there was no information available to determine the amount of fines associated with these 135 entities or the response rate to the initiative.

Clearly, DCA needs to aggressively investigate entities found guilty of performing unlicensed activity and design alternative measures to target and to collect fines from these violators.

Recommendations

DCA should:

3. Consider having its inspectors personally serve NOV/H to entities that are charged with performing unlicensed activity.

DCA Response: DCA generally disagreed, stating: "With few exceptions, DCA's Enforcement Division already serves the vast majority of the NOV/H for unlicensed activity in person. However, it is DCA's policy not to deliver NOV/H to businesses operating out of private residences (as many HICs [Home Improvement Contractors] do) for safety concerns and the inability to padlock a private residence. Instead, as we've noted, we serve such violations by mail which ensures that the entities receive the violations without endangering our staff."

Auditor Comment: When a violation for unlicensed activity is issued resulting from a consumer complaint, DCA generally serves the violation by mail rather than in person. However, many of these violations are for large dollar amounts. Since DCA considers these types of fines the most difficult to collect and the least likely to be collected, the

agency could better determine the enforceability of fines if inspectors attempted to serve violations to the respondents in person.

4. Continue to investigate and design alternative measures to target unlicensed entities as a means of collecting fines and enforcing licensing regulations.

DCA Response: DCA agreed.

Inefficient Performance of Adjudication and Collection Tasks

DCA does not maintain adequate controls to ensure that Adjudication and Collections tasks are performed in a consistent, timely, and efficient manner. These deficiencies contributed to DCA's limited effectiveness in securing payment from respondents.

Comptroller's Directive #1 states, "internal controls are intended to provide reasonable assurance that program goals and objectives are effectively and efficiently met; . . . [and] resources are adequately safeguarded and efficiently used." The Directive also requires that "agency programs be evaluated according to specific criteria for performance measurement," and that performance (i.e., efficiency) and outcome (i.e., effectiveness) measures be compared over time.

DCA Has No Milestones for the Performance of Tasks

DCA has not established milestones to trigger, and timeframes to measure, the performance of various Adjudication and Collections activities to persuade violators to pay their fines. Also, DCA has not established adequate criteria to measure the efficiency and effectiveness of its Adjudication and Collection activities.

Even though DCA has work-flow procedures that outline the steps involved in performing Adjudication and Collection tasks, they do not establish specific time requirements for the performance of such tasks. At the exit conference, DCA officials stated that their goal is for Adjudication to mail decisions within 30 days of the close of a hearing record. They added that the hearing record often remains open after the final hearing date to allow respondents to submit briefs or other materials. Despite this goal, since the time it takes to close a hearing file can vary from case to case, there is no standard to measure the time it takes for Adjudication to move the cases along and for Collections to send out dunning letters.

In the annual Mayor's Management Report, DCA includes performance indicators for Adjudication, Legal Affairs, and Collection activities, consisting of the quantity of case dispositions, case openings, and collection amounts. However, there are no case-processing or productivity indicators to indicate the age (in days) and status (adjourned, appealed, etc.) of open cases and the time it takes to close cases. Moreover, there are no indicators to indicate the number and backlog of open cases.

Overall, there was insufficient data for us to measure the time that it took Adjudication to turn over unpaid cases to Collections; therefore, we could not assess whether delays were generally attributable to Adjudication or Collections, or both. Nevertheless, our review of sampled case records demonstrated overall inconsistent and untimely processing of violations and performance of tasks employed to recoup payment of fines from violators.

The inconsistent and untimely processing of violations and collection tasks is directly related to the agency's inability to collect fines. The longer a fine goes unpaid, the greater the likelihood that DCA will be unable to collect the fine, since over time debtors may go out of business or relocate. Without milestones and time-triggers, as well as performance and outcome measures, DCA management cannot be assured that its collection efforts are being appropriately allocated and carried out in a timely manner so as to maximize the collection of fines from violators.

Information Not Consistently Recorded in Case Records

DCA Adjudication and Collections personnel should document certain events in the respondent case files and in CAMIS to ensure that the files are complete. However, we found that information was not consistently recorded or documented in both the case files and CAMIS.

For example, the date that the Settlement Officer settles a non-hearable case was sometimes recorded in the case file only, in CAMIS only, or not recorded in either the case file or CAMIS. Without ensuring that information is appropriately and consistently recorded in case records, paper or electronic, DCA cannot be assured that appropriate actions will be taken to address outstanding fines and that such actions are performed in a timely manner.

Case Files Not Adequately Tracked

When Adjudication transmits unpaid violations to Collections, the case files are not adequately tracked. There is no log or master file to identify when the cases were transmitted by Adjudication to Collections. The only record that appears to exist is a case assignment log that is maintained by the Collections Supervisor. While this assignment log indicates the violation number of each case assigned to Collections Representatives, it does not detail the dates the cases were received from Adjudication and assigned to a Collection representative.

At the beginning of our audit in February 2006, we requested the case files for the 156 violations in our sample. DCA personnel could not find one of the case files for a violation that was issued on March 31, 2005, and had not been settled by Adjudication. Even though the file was eventually found, because DCA has inadequate procedures to track the processing and movement of case files, the violation was not reviewed by Adjudication until February 22, 2006, and a fine of \$900 imposed. The case was sent to Collections and on June 22, 2006, a dunning letter was sent to the respondent, nearly 15 months after the violation was issued.

Without adequate procedures and records to track the flow of case files, DCA lacks the ability to identify bottlenecks in Adjudication and Collections operations that should be

corrected. Moreover, there is no record to track the location of case files and to identify the status of violations.

At the exit conference, DCA official said that in June 2006, Adjudication began sending to Collections a dated electronic copy of an Excel spreadsheet listing information such as the violation issue dates and violation numbers. DCA provided us with a sample of the printed spreadsheet as evidence of this new procedure. The new procedure appears to provide DCA with an ability to track the flow of cases from Adjudication to Collections; however, since information about the new procedure was not provided until the exit conference, no testing was conducted to determine its effectiveness.

Consolidated Payment Plan Agreement Terms Not Enforced

Collections does not adequately administer existing Consolidated Payment agreements. The Consolidated Payment Program (CPP) allows certain businesses (primarily supermarket and drug store chains) that operate multiple locations throughout the City and that accumulate numerous violations, to address the violations and pay reduced fines efficiently. Currently, there are 25 parties that have entered into consolidated payment agreements with DCA.

Specifically, 79 of the 199 violations that were billed on the January 2006 statements sent to CPP participants had been billed repeatedly on previous monthly or quarterly billings but remained unpaid *for up to five years*, as measured from the NOV/H issue date. These 79 violations were issued between February 21, 2001, and November 29, 2005, and carried total net fines of \$38,728.

According to the standard CPP agreement, unless a particular violation is contested, the respondents agree to pay the total amount of the billed fines within 30 days from the submission of the monthly or quarterly DCA billing statement. If an individual fine is not paid or is not contested, a hearing for that violation should be scheduled at DCA Adjudication.

DCA did not have a hearing for any of the 79 violations that were repeatedly billed and remained unpaid. DCA officials noted that 59 violations with outstanding fines of \$23,060 were for one CPP participant, and that they were being handled by the Litigation department. Nevertheless, 20 other violations with net fines totaling \$15,418 that remained unpaid as of the January 23, 2006 bill date, despite repeated billings, were not scheduled for a hearing in accordance with the CPP provisions. As of July 3, 2006, 7 of these 20 violations still remained open with \$4,218 in outstanding fines.

Without adequate procedures to ensure that unpaid violations covered by CPP agreements are appropriately handled in accordance with the terms of the agreements, DCA allowed violations to go uncollected for an indefinite period of time.

Dunning Letter Errors and Inconsistencies

We noted errors and inconsistencies in dunning letters sent to respondents to encourage payment of fines. Specifically, we noted that DCA lacked standardized language for collection

correspondence; therefore, poorly drafted text and erroneous information in dunning letters created ambiguity in the communications with respondents.

In one case, DCA sent a November 22, 2004 dunning letter to a respondent containing confusing language. The letter stated: “a decision was issued against your business on 11-20-04 in which you were *fin ed and paid with a balance of \$3,000 is now due and owing.*” (Emphasis added.) In another example, a March 9, 2005 dunning letter was sent to a respondent containing incorrect information. The letter stated that the respondent was fined \$1,050 and that the respondent’s license had been suspended pursuant to a decision rendered on January 27, 2005. We found that the initial NOV/H was issued on May 24, 2004, the decision was rendered on August 3, 2004, and the license suspended on January 27, 2005.

Without ensuring that collection correspondence contains clear and accurate information, DCA reduces the effectiveness of dunning letters as a measure to persuade respondents to pay past-due fines.

Recommendations

DCA should:

5. Establish controls to ensure that Adjudication and Collections tasks are performed in a consistent, timely, and efficient manner. These controls should include milestones for the performance of Adjudication and Collections tasks and criteria to measure the efficiency and effectiveness of these tasks. They should also include procedures to ensure that required information is appropriately and consistently recorded in respondent case records (paper or electronic), and that the status and location of case files are adequately tracked as they move from Adjudication to Collections.

DCA Response: DCA generally agreed.

6. Reconcile the periodic CPP billing statements with fines collected and violations contested to determine the fines that remained outstanding.

DCA Response: DCA generally agreed.

7. Schedule hearings for violations issued to CPP participants that remain either unpaid or uncontested.

DCA Response: DCA agreed.

8. Standardize the text of communications sent to respondents and take measures to ensure that clear and accurate information is conveyed to respondents.

DCA Response: DCA agreed.

\$345,775 Gross Misstatement of Fines

Our audit identified weaknesses in the processing of violations that caused a gross misstatement of \$345,775 in the amount of outstanding fines reflected in CAMIS for the 156 violations in our sample and for other respondent accounts not included in our original sample.

Comptroller's Directive #1 states: "Control activities should exist at all levels and functions of an agency." The activities include approvals, authorizations, verifications, record reconciliation, transaction analysis, and the creation and maintenance of related records that provide evidence of the execution of these activities: "Sound control activities help ensure that all transactions are timely and accurately recorded." These measures are designed to provide reasonable assurance that errors or irregularities will be prevented or detected.

There were errors in the calculation and recording of assessed fines, delays in the posting of payments and adjustments, and other errors that occurred because of the lack of controls to prevent and detect such errors. These matters are discussed below.

Undetected Calculation Errors

We determined that at the time of adjudication, the fines assessed for two of the 156 violations in our audit sample were miscalculated. Collectively, fines totaling \$408,200 were assessed for these two violations and subsequently posted in CAMIS. The correct amount of the fines should have totaled \$98,800, leading to a gross misstatement of \$309,400 in fines posted in CAMIS—representing nearly 20 percent (20%) of the \$1,564,452 in fines assessed for the 156 violations in our sample. These errors went unchecked, undetected, and therefore uncorrected, until we apprised DCA of our findings.

In one case involving a home improvement contractor, an error of \$279,000 was made in calculating and subsequently recording the fine in CAMIS. A default decision was rendered and a fine of \$310,000 assessed against the respondent for conducting unlicensed activity for 310 days. While the applicable statute establishes the fine amount at \$100 per day, and such language is indicated in the decision, the ALJ calculated and entered a fine amount of \$310,000, rather than the correct amount of \$31,000. Based upon the ALJ decision, the incorrect fine amount was entered in CAMIS and charged against the respondent.

In another case involving a home improvement contractor found guilty of conducting unlicensed activity, a default decision was entered against the respondent that was overstated by \$30,400. In this particular case the number of days that the respondent was charged with carrying out unlicensed activity was incorrectly calculated. The decision found the respondent guilty of performing unlicensed activity for a period of 982 days rather than the correct 678 days that elapsed between August 21, 2003, and June 28, 2005. Consequently, a fine of \$98,200 (the statutory \$100 per day) was assessed, rather than the correct amount of \$67,800. Again, the calculation error went undetected, and the incorrect fine amount was recorded in CAMIS.

The hearing officer's findings, along with the assessed fines, are written in the decision and accordingly entered in CAMIS without being reviewed for accuracy. Therefore, in both

instances the miscalculated fine amounts were entered in CAMIS, resulting in the overstatement of fines receivable. Even though DCA officials took corrective action upon being made aware of these errors, since there are no established controls to detect or prevent errors at the adjudication level, there is a risk that errors and miscalculations, such as those discussed above, will continue to go unchecked and uncorrected.

Delays in Posting Payments and Adjustments

We identified violations in our sample in which delays in the posting of payments or adjustments resulted in misstatements in the outstanding balance of the corresponding respondent accounts in CAMIS. Comptroller's Directive #1 requires that transactions should be promptly recorded.

For example, in one case the respondent was issued a violation on March 28, 2005, and paid the fine amount of \$120 on May 19, 2005. However, DCA personnel failed to post the payment in CAMIS until April 11, 2006, nearly 11 months after the payment was received.

In another example, the respondent was issued a violation on September 28, 2004, and scheduled to appear at Adjudication on December 9, 2004. One day prior to the scheduled appearance, on December 8, 2004, a pleading letter was sent to the respondent offering the reduced pleading fine of \$250. The respondent did not appear as scheduled, but instead paid the reduced pleading amount on December 21, 2004. However, this payment was overlooked. Consequently, upon review of the case by a DCA Settlement Officer on July 7, 2005, the fine was increased to \$300 and recorded in CAMIS, despite the fine having been paid seven months earlier. As of February 10, 2006, the respondent account showed an unpaid amount of \$50. We considered the increase in the fine erroneous; therefore, the respondent account in CAMIS was misstated by \$50.

Upon being apprised of the latter case, DCA officials took action to correct the error. While they stated that the mistake was caused by a "housekeeping" error, DCA officials did not provide sufficient information about the procedures in place to detect and correct such errors. These delays in posting payments and adjustments were created by control weaknesses.

Uncorrected Credit Balances

In addition to errors identified with the 156 sampled violations, we identified 39 respondent accounts in CAMIS with credit balances totaling \$57,343. Eighteen of these balances represented fines that were either being appealed or pending; therefore, the actual fine amount had not been assessed. However, the remaining 21 accounts with credit balances totaling \$36,325 were erroneous, resulting in another misstatement of outstanding balances in CAMIS. None of the 21 accounts had corresponding debit amounts posted to CAMIS.

During the audit, DCA officials stated that the errors occurred because Adjudication personnel did not record the corresponding fine amounts in CAMIS at the time the fines were assessed. At the exit conference, DCA officials asserted that the fines in the 21 cases were entered in CAMIS at the time the fines were assessed; however, because of the way CAMIS is

designed, subsequent CAMIS entries, not pertaining to the fine amount, caused the debits to disappear from the Open Items Screen. Also, they said that since these errors were brought to their attention, DCA staff has been trained to work around this CAMIS issue.

Regardless of the reasons for the errors, DCA needs to ensure that adequate controls are in force to prevent and detect errors at the adjudication level and to ensure that payments, adjustments, and assessed fine amounts are recorded in CAMIS in a timely and accurate manner. Without adequate controls there is an increased risk that such calculation and posting errors will remain undetected and, therefore, uncorrected. Consequently, DCA could incorrectly apply erroneous credit balances against outstanding violations or refund the amount. Also, without adequate controls, DCA management cannot be assured that the respondent accounts reflected in CAMIS accurately reflect outstanding fines. Further, such weaknesses prevent DCA from accurately tracking the total value of outstanding fines.

Recommendations

DCA should:

9. Ensure that assessed fines imposed by hearing officers or administrative law judges are verified for accuracy prior to the amounts being recorded in CAMIS and the decision being mailed to the respondents.

DCA Response: DCA generally agreed.

10. Require the periodic reporting, review, investigation, and resolution of violations and payments to ensure that payments are appropriately posted in CAMIS in a timely manner.

DCA Response: DCA generally agreed.

11. Establish procedures to identify, report, and review CAMIS accounts with credit balances in a timely manner and, where applicable, correct such balances.

DCA Response: DCA generally agreed.

Weakness in Accounts-Receivable Controls over Unpaid Fines

DCA manages, records, and reports revenue from fines on a cash basis—the amount of fees collected. While cash collections may be appropriately controlled, DCA lacks adequate accounts-receivable controls over unpaid fines to ensure that CAMIS reflects accurate balances, that total fines-receivable are reported fairly, and that collection efforts are correctly allocated.

Comptroller's Directive #21 states that unpaid fines are considered revenue receivables, have "all the attributes of accounts receivable, and should, therefore, be subject to proper internal accounts receivable controls." It also requires that a record of all agency receivables be

maintained centrally in a manner to facilitate the preparation of periodic, aged receivable reports that are to be forwarded to the agency head, and outlines measures for agencies to follow concerning billing, accounts-receivable controls, and accounts-receivable write-offs.

Specifically, we found that DCA does not report, reconcile, or age outstanding fines on a monthly or other periodic basis, does not have a policy to write-off uncollectible fines, and does not have a mechanism to estimate collectible fines. These matters are discussed below.

Monthly, Aged Accounts-Receiveable Fine Reports Are Not Required

According to the DCA self-assessment of its internal controls covering calendar years 2004 and 2005, DCA management affirmed that appropriate controls over all accounts receivable were in force, including the monthly reconciliation, reporting, and aging of accounts receivable. However, based on representations made by DCA officials during the audit, we learned that the agency does not generate periodic, aged reports of unpaid fines as required by Comptroller's Directive #21.

Our review of sampled respondent accounts disclosed that for each account, CAMIS has the capacity to reflect the full amount of fines assessed, paid, and outstanding, as well as relevant hearing dates, dispositions, etc., as long as the data is appropriately entered. Since CAMIS provides a central record of receivables information, DCA could design and generate monthly aging reports of outstanding fines receivable. This type of report could be used to track and monitor past due accounts and track them by the age of the fines. Ultimately, by maintaining and reviewing accounts receivable records, DCA could improve its ability to collect past due fines.

Lack of Methods to Estimate Collectible Fines

While CAMIS provides a central record of receivables information, from which various ad hoc reports can be generated, and provides DCA with the ability to view respondent accounts online, one at a time, neither function provides DCA with a measure to determine the accurate amount and age of its outstanding fines receivables, as required by Comptroller's Directive #21. In that regard, we found that DCA lacks procedures to estimate uncollectible accounts and to state its receivables at their net realizable value, as necessitated by generally accepted accounting principles.

Since assessed fines posted in CAMIS may be reduced in the future and may not equal actual payments collected from respondents, DCA could better manage its receivables by having a method for estimating uncollectible fines in order to state its receivables at their net realizable value. Accounts-receivable reporting, in conjunction with appropriate valuation methods, can assist DCA to monitor total outstanding, unpaid fines. It can also be useful for the agency in its revenue management as well as in cash flow forecasting.

No Write-Off Policy

DCA does not have a write-off policy for bad or uncollectible fines, although Comptroller's Directive #21 requires such a policy. Consequently, DCA has allowed uncollectible fines to accumulate in the CAMIS database, resulting in an overstatement of outstanding, unpaid fines.

DCA generally classifies violations with uncollectible fines as "zero-contact," meaning that all internal collection efforts have been exercised and exhausted without securing payment of fines from violators. While in general DCA's zero-contact classification deems specific unpaid fines as uncollectible, DCA officials said such fines are not written-off or removed from CAMIS. Instead, these uncollectible fines are left to accumulate in the CAMIS database for an indefinite period. DCA officials defended this treatment stating that it assists the agency to collect fines. If someone wants to renew or to apply for a new DCA license in the future and has unpaid fines, the applicant will be required to pay the fines before DCA will renew or approve the license.

DCA may recoup some payments from licensing applicants; however, the large volume of case folders we observed in the DCA zero-contact files and the \$28.3 million in total unpaid fines reflected in CAMIS as outstanding for the period January 1, 2000, through July 29, 2006, indicate that the procedure is not effective in recouping payment for past-due fines.

DCA does not maintain a log or master list of all accounts contained in the zero-contact file. In addition, although DCA denotes the zero-contact classification of violations in the CAMIS comments screen, there is no unique identifier indicating this classification. Therefore, DCA can not readily identify or generate a report listing violations with all unpaid fines deemed uncollectible. By appropriately augmenting its CAMIS database, DCA could write-off fines deemed uncollectible and still flag those applicants who did not pay their fines. Thus, if a new applicant is found not to have paid DCA fines and the amount was previously written-off, DCA could reinstate the old debt on its database, collect it and any new fees, and record the payments prior to issuing a new DCA license.

Since the fines collected by DCA represent at least one-third of the agency's annual revenue budget, good controls and measures to manage related information are required. Without adequate procedures and mechanisms to adequately track the age of its receivables, estimate collectible fines receivable, and appropriately write-off or at least identify uncollectible amounts, DCA management cannot be assured that its records accurately reflect enforceable debts. Moreover, the valuation of DCA's account receivable cannot be adequately stated for business purposes, such as providing for effective revenue management or for budgetary forecasting purposes.

Recommendations

The DCA should:

12. Comply with Comptroller's Directive #21 by developing procedures to report its accounts-receivable balance monthly, identify or estimate and write-off fines deemed uncollectible, and report its write-off procedures, along with any write-off amounts, to the Comptroller's Office.

DCA Response: DCA agreed, stating: "The Comptroller's Directive #21 does not provide sufficient guidance with respect to DCA's mandate as a licensing agency. However, DCA is currently in the process of preparing a write-off policy which will comply with Directive #21 while also ensuring that entities with outstanding fines cannot evade fines by receiving new licenses. Upon approval, the written procedures will be forwarded to the Comptroller's Office along with all fines that are subsequently written-off."

Auditor Comment: The Comptroller's Directives cover a broad array of management issues, internal controls, and procedures and are intended as a guide for all City agencies. Management for each agency is expected to design and implement operational policies and procedures particular to their agency. Nevertheless, we are pleased that DCA is currently formulating a write-off policy.

13. Develop a monthly accounts-receivable reporting component for CAMIS.

DCA Response: DCA partially agreed, stating "DCA's MIS Division will explore the feasibility of adding a component to CAMIS for generating an accounts receivable report on a monthly basis."

14. Augment the CAMIS database to flag accounts that are written-off and allow for the reinstatement of the written-off amounts in the event that payment is later obtained.

DCA Response: DCA partially agreed, stating: "DCA will explore efficiently augmenting the CAMIS database to flag accounts that are written-off and allow for the reinstatement of the written-off accounts in the event that payment is later obtained."

15. Establish and maintain a log or record of all "uncollectible" accounts currently contained in the "zero-contact" file and those subsequently transferred to it.

DCA Response: DCA agreed.

16. Determine a reasonable estimate of uncollectible accounts in order to calculate the net realizable value of accounts receivable for reporting and management purposes. This estimate should be reviewed and updated periodically, based on historical data.

DCA Response: DCA agreed.

Lack of Written Policies and Procedures

DCA lacks formal, written policies and procedures to comprehensively address and establish standards for all aspects of the processing of violations and collection of fines, including the handling of cash receipts, cash reconciliations, adjudication of summonses, data entry, and record keeping.

Comptroller's Directive #1 states: "Internal control activities . . . are, basically, the policies, procedures, techniques, and mechanisms used to enforce management's direction. They must be an integral part of an agency's planning, implementing, review and accountability for stewardship of its resources and are vital to its achieving the desired results." The Directive also requires that the objectives that management has set for various functions of the agency be written in manuals that are communicated to appropriate personnel.

According to the agency self-assessment of internal controls covering calendar years 2004 and 2005, DCA indicated that management policies were reflected in formal written operating procedures, that these procedures are communicated to the appropriate agency staff, and reviewed and updated as needed. Accordingly, we requested copies of the DCA's written policies and procedures reflecting the internal procedures for the collection of fines, cash controls, cash reconciliations, adjudication of violations, data entry, record keeping, and other related functions.

DCA provided us with various policy and procedures memoranda and documentation relating to the processing of violations and collection of fines. However, our review disclosed that the procedures reflected in these memoranda did not comprehensively address all of the functions involved, nor did it reflect all of the procedures currently followed by DCA employees processing violations and collecting fines. For example, DCA did not have formal written procedures detailing the steps involved in the processing of violations or over Collection Unit procedures, such as those involving installment payment agreements, returning default cases to Adjudication, or communicating with respondents. In general, we ascertained the procedures for most functions by reviewing applicable statutes and interviewing various DCA officials and personnel.

Written policies and procedures, whether required by laws or regulations, are recognized as good operating practices necessary to accomplish the mission of the organization. Written policies and procedures provide an organization with assurance that every person involved in a process within the organization understands the mission of the organization, the tasks that are to be accomplished, and the acceptable methods to be used in performing those tasks. They also provide an effective mechanism for training and evaluating the performance of staff in their duties. By not maintaining comprehensive, written policies and procedures, DCA management has no assurance that policies and procedures are properly communicated and consistently followed. Also, there is no assurance that new personnel have adequate guidance in carrying out their assigned duties.

Recommendation

The DCA should:

17. Develop a comprehensive policies and procedures manual that addresses all internal processes and functions throughout the agency and distribute the manual to appropriate DCA departments and personnel. The manual should be updated periodically to address newly implemented or restated procedures.

DCA Response: DCA partially agreed, stating, “DCA will prepare a comprehensive policies and procedures manual that addresses internal processes and functions for the Collections division, which was the subject of this Audit. The manual will be distributed to appropriate DCA personnel and will be updated periodically to address newly implemented or restated procedures.”

Auditor Comment: DCA management cannot be assured that all the weaknesses disclosed in this audit will be appropriately addressed and remedied if it limits itself to developing a policies and procedures manual that addresses the processes and functions of the Collections division only. Other agency activities (Adjudication, the tracking and handling of source documentation, and the reporting and accounting of unpaid violations) impact DCA’s overall ability to collect fines assessed against violators. Comprehensive, clearly written, formal policies and procedures that address each function of the DCA operation, particularly those areas that affect the processing of violations and collection of fines, will establish the strong internal controls that DCA is required to maintain.

APPENDIX

Table I
Summary and Aging of \$28.3 Million in Unpaid DCA Fines for (Hearable and Non-Hearable) Violations as Reflected in CAMIS Data
From the Period January 1, 2000, through July 29, 2006,
As of July 29, 2006

Violation Type		AGING OF UNPAID BALANCE AS OF JULY 29, 2006											
		(a) Total Fines Assessed	(b) Total Payments Collected	Number of Violations	(c) Balance of Unpaid Fines (Col a - Col b)	0-12 months*		13-24 months		25-36 months		Over 36 months	
						(08/01/05-07/29/06)	(08/01/04-07/31/05)	(08/01/03-07/31/04)	(07/31/2003 and prior)				
		(\$)	(\$)	(#)	(\$)	# Viol	(\$)	# Viol	(\$)	# Viol	(\$)	# Viol	(\$)
Unlicensed Activity	Total	\$27,454,772	\$8,872,212	19,195	\$18,583,560	3,401	\$5,593,906	3,302	\$3,739,476	2,975	\$3,119,134	9,517	\$6,130,044
	Pct	40.1%	22.1%	23.6%	65.6%	19.8%	64.9%	21.7%	65.3%	27.8%	71.3%	24.8%	63.8%
Tobacco Law	Total	\$18,218,610	\$14,325,996	22,427	\$3,892,614	8,170	\$1,668,125	6,248	\$830,950	2,163	\$464,751	5,846	\$928,789
	Pct	26.6%	35.6%	27.5%	13.7%	47.5%	19.4%	41.0%	14.5%	20.2%	10.6%	15.3%	9.7%
License Law	Total	\$11,677,683	\$8,419,522	13,051	\$3,258,162	2,398	\$631,672	2,603	\$617,184	1,889	\$355,362	6,161	\$1,653,944
	Pct	17.0%	20.9%	16.0%	11.5%	13.9%	7.3%	17.1%	10.8%	17.6%	8.1%	16.1%	17.2%
Consumer Law	Total	\$6,153,405	\$4,856,342	8,876	\$1,297,063	1,685	\$559,689	1,724	\$268,052	876	\$245,658	4,591	\$223,663
	Pct	9.0%	12.1%	10.9%	4.6%	9.8%	6.5%	11.3%	4.7%	8.2%	5.6%	12.0%	2.3%
Weights & Measures Law	Total	\$5,019,569	\$3,719,723	17,879	\$1,299,846	1,531	\$164,639	1,351	\$268,159	2,808	\$191,592	12,189	\$675,456
	Pct	7.3%	9.3%	22.0%	4.6%	8.9%	1.9%	8.9%	4.7%	26.2%	4.4%	31.8%	7.0%
Grand Totals	Total	\$68,524,038	\$40,193,794	81,428	\$28,331,244	17,18	\$8,618,031	15,228	\$5,723,820	10,711	\$4,376,497	38,304	\$9,611,896
	Pct	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

(* Note: The CAMIS data provided by DCA for the stated period did not include fines (debits) assessed during July 2006; however, there were 615 payments (credits), totaling \$379,190, posted in July 2006. Therefore, the cutoff date of July 29, 2006 was appropriately used to age the outstanding fines.

APPENDIX

Table II

**Summary of Fines Assessed and Recorded in CAMIS and Related Unpaid DCA Fines for (Hearable and Non-Hearable) Violations as
During the 4-month period April 1, 2006, through July 29, 2006,
As of July 29, 2006**

Violation Type	Number of Violations	Percent (%) of All Violations	Aging of Unpaid Fines Totaling \$2,872,475 For Violations Assessed a Fine and Reflected in CAMIS data during the 4-month period April 1, 2006, through July 29, 2006, as of July 29, 2006									
			(a) Total Fines Assessed	Percent (%) of Total Fines Assessed	(b) Total Credit Amount	Percent (%) of Total Collections	(c) Balance of Unpaid Fines (Col. a - Col b)	Percent (%) of Total Unpaid Fine Balances	0-30 days* (07/01-29/06)	31-60 days (06/01-30/06)	61-90 days (05/01-31/06)	91-120 days (04/01-30/06)
Unlicensed Activity	1,225	26%	\$2,346,537	48%	\$344,345	17%	\$2,002,192	70%	\$0	\$1,358,468	\$500,468	\$143,256
Consumer Law	511	11%	\$546,475	11%	\$408,946	21%	\$137,529	5%	\$0	\$45,705	\$50,010	\$41,814
License Law	638	13%	\$421,677	9%	\$311,267	16%	\$110,409	4%	\$0	\$39,230	\$31,724	\$39,455
Tobacco Law	1,939	41%	\$1,405,800	29%	\$847,556	43%	\$558,244	19%	\$0	\$218,446	\$213,477	\$126,321
Weights & Measures Law	455	10%	\$132,051	3%	\$67,950	3%	\$64,101	2%	\$0	\$26,340	\$26,545	\$11,216
Grand Total	4,768	100%	\$4,852,540	100%	\$1,980,065	100%	\$2,872,475	100%	\$0	\$1,688,189	\$822,224	\$362,062
<i>Percent</i>			<i>100% of Total Assessed Fines for the period 4/1/06-07/29/06</i>		<i>41% of Total Assessed Fines Collected for the period 4/1/06-07/29/06</i>		<i>59% of Total Assessed Fines for the period 4/1/06-07/29/06 Remaining Unpaid</i>		<i>0% of Total Unpaid Fines for the period 4/1/06-07/29/06</i>	<i>59% of Total Unpaid Fines for the period 4/1/06-07/29/06</i>	<i>29% of Total of Unpaid Fines for the period 4/1/06-07/29/06</i>	<i>12% of Total of Unpaid Fines for the period 4/1/06-07/29/06</i>

(*) Note: The CAMIS data provided by DCA for the stated period did not include fines (debits) assessed during July 2006; however, it reflected 615 payments (credits), totaling \$379,190, posted in July 2006. Only those payments (credits) associated with fines assessed and recorded in the CAMIS data for the four-month period April 1, 2006 through July 29, 2006, were considered in the above analysis.



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March 19, 2007

John Graham, Deputy Comptroller
Audits, Accountancy & Contracts
NYC Office of the Comptroller
One Centre Street, 5th Floor
New York, NY 10007

Dear Mr. Graham,

The Department of Consumer Affairs (DCA) appreciates the opportunity to respond to the March 8, 2007, *Draft Audit Report on the Department of Consumer Affairs Internal Controls Over the Processing of Violations and Collection of Fines - MJ06-113A*. While the Department recognizes the usefulness of certain recommendations contained in the audit, we are concerned that many of the report's conclusions are exaggerated and misleading, and consequently fail to recognize a significant portion of the work conducted by the Department of Consumer Affairs.

However, before responding to the recommendations we would like to express a few general concerns about the audit.

First, we are concerned that the methodology employed in this audit appears to have skewed its conclusions. Of the 11,147 violations assessed by DCA in FY'05, the report examined 156 violations, 19 of which were chosen based on the large size of the fine. These 19 subjectively chosen violations represent a whopping \$1.45 million (93%) of the total \$1.56 million in assessed fines in the sample. This subjectively chosen data substantially unbalances the sample so that it cannot be extrapolated to the larger universe of 11,147 fines assessed in FY'05.

Conclusions drawn from this unbalanced sample are at best misleading; by their nature these large fines are by far the most difficult to collect as they are issued to the least scrupulous and dependable of entities thus by choosing to focus disproportionately on these large fines, the audit report does not accurately or fairly represent the extensive effort that DCA puts into collecting the full universe of outstanding fines. Further unbalancing the sample is the fact that of the 19 subjectively selected violations, 11 (58%) of them were issued to Home Improvement Contractors (HIC) while in contrast in FY'05, HIC violations accounted for a mere 6% of the total violations assessed by DCA. This focus on the fines, which the report itself acknowledges,

**Response to Draft Audit Report on the Department of Consumer Affairs
Internal Controls Over the Processing of Violations and Collections of Fines**

MJ06-113A

March 8, 2007

are the most difficult category of vendors from which to collect fines further skews any conclusions.

Second, as you noted in the report, DCA does not have authority to hold hearings in its administrative tribunal on all types of violations issued by our inspectors. Our tribunal cannot hear cases arising out of most violations issued under the Consumer Protection Law and Weights and Measures Law. Thus, we do not have judgments or orders compelling these entities to pay fines and our ability to exact payment is limited. Nevertheless, the audit's findings fault DCA for not collecting these non-hearable violations. In fact, according to your report the categories encompassing most of these non-hearable violations (Consumer Law and Weights and Measures violations) account for over 15% of the fines assessed from 2000 to 2006. So while DCA is aggressively seeking hearing authority over these laws, the Agency's only current recourse for non-hearable violations is to pursue the matter in State court. This type of action requires significant time and resources which are not commensurate with the nature of the violation or the fine that we would obtain in most cases. Thus, including these types of fines in the total outstanding fines is misleading and does not reflect the limits of the Agency's legal authority.

Third, the report "double dips" in its fault finding by suggesting errors in one section and then including the erroneous information in the total amounts in the next section. For example, one of the central recommendations of the report is that DCA develop a write-off policy. The Agency did not have one in the past to prevent entities with outstanding violations from obtaining a new license without paying the fine. We have reconsidered that position and the Agency is in the process of developing such a policy; applying such a policy means that the total outstanding fines would be less than \$28.3 million. Further, the \$28.3 million is overstated because it includes fines which could not possibly have been collected within the sample period. Reporting on fines assessed through July 29, 2006 as well as fines collected in that same period makes it impossible that all assessed fines would even have an opportunity to be collected; for example, a fine assessed on July 28, 2006 would not be collected by July 29, 2006.

Further, the report identifies \$309,400 in fines that were assessed erroneously based on two data entry errors. While DCA has modified its systems to avoid these mistakes in the future, the report includes these erroneously assessed fines in the total uncollected fines from the sample of 156 violations, thereby overstating the amount of uncollected fines by one-third.

In addition, while discussing the effectiveness of Adjudication and Collection activities, the report states that Collections was only able to collect "20 (13%) of the 156 sampled violations." A table was even added emphasizing this point. However, what was mentioned only once, in of all places the "Adjudication Activities" section of the report, Collections was only responsible for 61 violations as the other 95 violations had already been collected by Adjudications and Legal. So, Collections was actually able to collect a third of the cases it received, not 13% as the report would have you believe. Additionally, it should be noted that overall, 118 of 156 violations were collected by the Agency (over 75%) and the portion of these cases which were forwarded to Collections were by their nature from the most non-compliant of entities (again see above comments regarding the difficulty in collecting violations such as the 19 subjectively

**Response to Draft Audit Report on the Department of Consumer Affairs
Internal Controls Over the Processing of Violations and Collections of Fines
MJ06-113A
March 8, 2007**

selected violations). These are three examples of the types of statements in your report that are misleading and thus taint and overstate its conclusions.

Fourth, the report appears to contain numerous mathematical errors, which call into question the completeness of some of the report's analysis and conclusions. Instead of discussing them here, we are available to resolve these inaccuracies.

Below are DCA's specific responses to the recommendations made in the report.

Recommendation #1 - Reevaluate the retention and use of an outside collection agency as part of its collection activities to recoup fines after internal efforts are exhausted.

DCA Response: DCA will again reevaluate the efficiency and effectiveness of using collection agencies to recoup fines after all internal efforts have been exhausted. As part of its evaluation process, DCA will consider the time and staff resources required by the use of collection agencies in comparison to the potential monetary benefit to the Agency. The Agency has launched a major initiative involving debt collection companies and as part of this initiative we have identified collection agency practices that are inconsistent with City, State and Federal law. Consequently, before using any outside entities the Agency will take into careful consideration the practices of such debt collection companies to make sure that they are consistent with the Agency's effort to protect the public.

Recommendation #2 - Seek the passage of legislation that would give DCA the authority to docket its hearings decisions in the Civil Court.

DCA Response: DCA has sought the passage of legislation for authority to docket its hearing decisions in the Civil Court for many years and will continue to do so. It should be noted that this legislation requires approval by both the State Legislature and the Governor.

Recommendation #3 - Consider having its inspectors personally serve NOV/H to entities that are charged with performing unlicensed activity.

DCA Response: With few exceptions, DCA's Enforcement Division already serves the vast majority of the NOV/H for unlicensed activity in person. However, it is DCA's policy not to deliver NOV/H to businesses operating out of private residences (as many HICs do) for safety concerns and the inability to padlock a private residence. Instead, as we've noted, we serve such violations by mail which ensures that the entities receive the violations without endangering our staff.

Recommendation #4 - Continue to investigate and design alternative measures to target unlicensed entities as a means of collecting fines and enforcing licensing regulations.

**Response to Draft Audit Report on the Department of Consumer Affairs
Internal Controls Over the Processing of Violations and Collections of Fines**

MJ06-113A

March 8, 2007

DCA Response: DCA will continue to investigate and design resource appropriate measures to target unlicensed entities as a means of collecting fines and enforcing licensing regulations. DCA has authority to seize vehicles and equipment from unlicensed HICs and tow truck operators prior to a hearing. With this pre-hearing seizure authority, DCA requires that respondents place fine amounts in escrow in order to have their vehicles and equipment released; this continues to be an effective means to ensure fines are paid. During the FY'05 audit period, DCA seized a total of 328 vehicles as part of its seizure authority. In addition, DCA has entered into an agreement with the NYC Department of Buildings (DOB) whereby DOB will not issue work permits to HICs unless they present a valid DCA license.

Recommendation #5 - Establish controls to ensure that Adjudication and Collections tasks are performed in a consistent, timely and efficient manner. These controls should include milestones for the performance of Adjudications and Collections tasks and criteria to measure the efficiency and effectiveness of these tasks. They should also include procedures to ensure that required information is appropriately and consistently recorded in respondent case records (paper or electronic), and that the status and location of case files are adequately tracked as they move from Adjudication to Collections.

DCA Response: The Adjudication Division has already had in place for more than two years, a milestone for the mailing of decisions within 30 days of the close of the hearing record and is currently in the process of establishing timeframes/milestones for the performance of its other tasks. As was previously discussed with the auditors, Adjudications has a system in place for sending case files to the Collections Division which includes not only entering the information into CAMIS but also listing the cases on the cover sheet of each packet of case files forwarded to Collections.

Upon receipt of cases from Adjudications, the Collections supervisor distributes the cases to its Collection Representatives who enter into CAMIS the date they were assigned the cases before commencing collection attempts. As with Adjudications, the Collections Division will institute appropriate timeframes/milestones for tracking performance and determining the efficiency and effectiveness of the performance of these tasks.

Recommendation #6 - Reconcile the periodic CPP billing statements with fines collected and violations contested to determine the fines that remained outstanding.

DCA Response: Collections already has a process in place for reconciling its CPP billings on a monthly basis with the exception of one entity which, as you know, the Department is attempting to resolve.

Recommendation #7 - Schedule hearings for violations issued to CPP participants that remain neither paid nor contested.

DCA Response: With the exception of the one participant discussed in the above response, all of the other CPP participants, approximately 1,207 stores, have maintained and are currently up-to-

**Response to Draft Audit Report on the Department of Consumer Affairs
Internal Controls Over the Processing of Violations and Collections of Fines**

**MJ06-113A
March 8, 2007**

date on their payments. During the last year, Collections has not had the occasion to schedule a hearing for contested/unpaid fines; however, should the situation arise, hearings will be scheduled in accordance with the CPP contracts. It should be noted that currently non-hearable offenses cannot be scheduled for hearings.

Recommendation #8 - Standardize the text of communications sent to respondents and take measures to ensure that clear and accurate information is conveyed to respondents.

DCA Response: Although the two inconsistencies noted in the report represent an extremely small proportion of the thousands of letters sent out by Collections, the existing letter templates used by Collections have been revised and are currently under review by DCA's Legal Staff. Upon approval by the Legal staff, the updated letter templates will be utilized as part of the collection process.

Recommendation #9 - Ensure that assessed fines imposed by hearing officers or administrative law judges are verified for accuracy prior to the amounts being recorded in CAMIS and the decision being mailed to the respondents.

DCA Response: Adjudication already has a policy requiring supervisory review of all decisions in cases in which the respondent has appeared for a hearing as well as for default decisions involving seized vehicles and sidewalk cafes. Adjudication has recently expanded its supervisory review process to include those default decisions in the category in which these errors were found as a means of ensuring the accuracy of fines before being recorded in CAMIS and being mailed to respondents.

Recommendation #10 - Require the periodic reporting, review, investigation, and resolution of violations and payments to ensure that payments are appropriately posted in CAMIS in a timely manner.

DCA Response: On rare occasion, a fee or fine payment is made prior the inspection information being entered into CAMIS. DCA will review how the processing of "unapplied" payments can be improved to better serve the needs of the Agency.

Recommendation #11 - Establish procedures to identify, report, and review CAMIS accounts with credit balances in a timely manner and, where applicable, correct such balances.

DCA Response: DCA will explore developing a report to be generated monthly which would identify all accounts with credit balances. In such cases where credit balances result in refunds, DCA will make such refunds as appropriate; in cases where these credit balances do not result in refunds DCA will take appropriate corrective action.

Recommendation #12 - Comply with Comptroller's Directive #21 by developing procedures to report its accounts-receivable balance monthly, identify or estimate and write-off fines deemed

**Response to Draft Audit Report on the Department of Consumer Affairs
Internal Controls Over the Processing of Violations and Collections of Fines**

**MJ06-113A
March 8, 2007**

uncollectible, and report its write-off procedures, along with any write-off amounts, to the Comptroller's Office.

DCA Response: The Comptroller's Directive #21 does not provide sufficient guidance with respect to DCA's mandate as a licensing agency. However, DCA is currently in the process of preparing a write-off policy which will comply with Directive #21 while also ensuring that entities with outstanding fines cannot evade fines by receiving new licenses. Upon approval, the written procedures will be forwarded to the Comptroller's Office along with all fines that are subsequently written-off.

Recommendation #13 - Develop a monthly accounts-receivable reporting component for CAMIS.

DCA Response: DCA's MIS Division will explore the feasibility of adding a component to CAMIS for generating an accounts receivable report on a monthly basis.

Recommendation #14 - Augment the CAMIS database to flag accounts that are written-off and allow for the reinstatement of the written-off amounts in the event that payment is later obtained.

DCA Response: DCA will explore efficiently augmenting the CAMIS database to flag accounts that are written-off and allow for the reinstatement of the written-off accounts in the event that payment is later obtained.

Recommendation #15 - Establish and maintain a log or record of all "uncollectible" accounts currently contained in the "zero-contact" file and those subsequently transferred to it.

DCA Response: DCA's Collections Division will commence using a log to record uncollectible accounts currently contained in the "zero-contact" file and for all those that are subsequently transferred to it.

Recommendation #16 - Determine a reasonable estimate of uncollectible accounts in order to calculate the net realizable value of accounts receivable for reporting and management purposes. This estimate should be reviewed and updated periodically, based on historical data.

DCA Response: DCA will establish a method based on historical data which it will use to calculate the net realizable value of accounts receivable for reporting and management purposes and review and update the method periodically.

Recommendation #17 - Develop a comprehensive policies and procedures manual that addresses all internal processes and functions throughout the Agency and distribute the manual to appropriate Departments and personnel. The manual should be updated periodically to address newly implemented or restated procedures.

**Response to Draft Audit Report on the Department of Consumer Affairs
Internal Controls Over the Processing of Violations and Collections of Fines
MJ06-113A
March 8, 2007**

DCA Response: DCA will prepare a comprehensive policies and procedures manual that addresses internal processes and functions for the Collections division, which was the subject of this Audit. The manual will be distributed to appropriate DCA personnel and will be updated periodically to address newly implemented or restated procedures.

Once again thank you for this opportunity to comment and please contact us with any questions.

Sincerely,



Jonathan Mintz

cc: J. Herrmann, DCA
A. Burkhart, DCA
A. Pico, DCA
T. Nelson, DCA
G. Pape, DCA