



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

WILLIAM C. THOMPSON, JR.
Comptroller

**Audit Report on the Department of Finance's
Collection of Penalties Imposed in
Environmental Control Board Cases**

MG02-118A

June 25, 2002

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EXECUTIVE SUMMARY

Background

The Department of Finance (DOF) administers and enforces New York City business, property, and excise tax laws; collects these taxes; educates the public about its rights and responsibilities in order to promote voluntary compliance; responds to requests from the public for information and assistance; and protects the confidentiality of tax returns. DOF also collects parking ticket fines, provides a forum for contesting these fines, and handles the final-stage collection efforts on Environmental Control Board cases.

The Environmental Control Board (ECB) of the Department of Environmental Protection makes the initial efforts to collect penalties for Notices of Violations (NOVs) issued by City agencies such as the Departments of Sanitation, Transportation, Police, Health, Buildings, Fire, and Environmental Protection. After providing a forum for contesting these NOVs and mailing at least two request-for-payment notices (called dunning notices) to the respondents, ECB forwards the cases to DOF for final penalty collection efforts. DOF has handled final-stage collection efforts on ECB cases since July 1996.

Upon the receipt of ECB cases on a computer tape, DOF procedures require a computer-system-generated mailing of at least one dunning notice, followed by an effort to contact the respondent by phone, an attempt to identify the respondent's assets, and a referral, if appropriate, to the DOF legal affairs unit. Depending on the nature of the case, the legal affairs unit then either initiates an execution of the judgment by the Sheriff's Office or a docketing of the case in court by the City Law Department.

In Fiscal Year 2001, DOF collected about \$1.9 million in revenue on ECB cases. The DOF collections unit for ECB cases consists of five full-time employees.

Objectives

The objectives of the audit were to review the effectiveness of DOF's collection efforts on ECB cases and to determine whether DOF is referring or selling older ECB cases to private collection agencies as was recommended in an earlier audit.

Scope and Methodology

On January 25, 2000, we issued an audit report (*Audit Report on the Case Processing Practices of the Department of Environmental Protection's Environmental Control Board, MG99-082A*) that focused primarily on the case processing and penalty collection efforts of the ECB. Although most of the recommendations in the report were addressed to ECB, it also recommended that the Department of Finance refer or sell older ECB cases to private collection agencies. The report also recommended that ECB and DOF prepare a written agreement delineating each agency's responsibilities for collecting ECB case penalties and that DOF provide reports to ECB on the results of DOF collection efforts. This audit report follows up on the specific recommendations relating to DOF made in the previous report and reviews the DOF penalty collection efforts on ECB cases collectible during Fiscal Year 2001.

In conducting this audit, we interviewed DOF officials and employees involved with efforts to collect ECB case penalties and reviewed DOF's written procedures for these efforts and other relevant documentation, including reports, contracts, agreements, case files, and database printouts. We also examined a random sample of 150 ECB cases of the 17,436 cases forwarded by ECB on computer tapes to DOF during Fiscal Year 2001. We reviewed information on these cases in the ECB Adjudication Information Management System (AIMS) and in the DOF Computer-Assisted Collection System (CACS).

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

Results in Brief

The Environmental Control Board has reported that the Department of Finance collected about \$8 million on ECB cases from July 1996 (when DOF assumed responsibility for final-stage collection efforts) through Fiscal Year 2001. DOF has also addressed two of the three recommendations made in our previous audit report on ECB that related to DOF. As recommended in the

previous audit, DOF and ECB have prepared a written agreement delineating each agency's penalty collection responsibilities, and DOF has begun to provide reports to ECB on the cases it receives from ECB and on some of the results of its collection efforts.

However, DOF has not seriously addressed the most important recommendation of the previous audit, that it refer or sell its older ECB cases to a private collection agency. This audit has also identified several other significant concerns about DOF's collection efforts, which are discussed below.

DOF Collection Efforts on a Large Proportion of its ECB Cases Have Been Minimal

DOF has made minimal collection efforts on a large proportion of its ECB cases. We estimate that an enhanced collection effort could help the City collect \$26.2 million in additional revenue.

There are three types of cases that the ECB sends to DOF for final-stage penalty collection efforts. These include AVPS, BARAMIS, and manual cases. The acronyms "AVPS" and "BARAMIS" refer to computer systems that ECB used until July 1999 to track most of its cases. Although these systems were replaced by the AIMS system, the acronyms are still used to distinguish cases that do not require corrective action by the respondent (the AVPS cases) from those that do require such action (the BARAMIS cases). Manual cases are those that are not tracked by AIMS and for which ECB mails documentation to DOF.

Although ECB could forward computer tapes on AVPS cases, DOF officials have informed us that they do not request such tapes because they do not have enough staff to work on the AVPS cases. DOF's decision to virtually ignore AVPS cases means that DOF made almost no effort to collect more than \$452 million in AVPS case penalties. DOF did not work on \$80 million owed in docketed AVPS cases that were received during Fiscal Year 2001; nor did it work on \$372 million owed in docketed AVPS cases that were more than one year old and still collectible during Fiscal Year 2001. If we assume conservatively that 10 percent of the current AVPS cases, or \$8.0 million (10% of the \$80 million owed), could have been collected through a concerted effort by DOF, and that three percent of the older AVPS cases, or over \$11.1 million (3% of the \$372 million owed), could have been collected, we estimate that at least \$19.1 million owed in docketed AVPS cases could have been collected during Fiscal Year 2001.

DOF works primarily on current BARAMIS cases. Cases that are more than one year old are generally placed automatically in an inactive status within CACS. The majority of the 17,436 BARAMIS cases that DOF received from ECB during Fiscal Year 2001, with a total value of about \$36 million, had not

been worked on by DOF as of January 16, 2002 (the first day we had access to CACS). We randomly selected and reviewed 150 of these cases and found that DOF staff did not work on over 68 percent of them.

The DOF staff that works on ECB case collections informed us that if they worked on a case, there would be a note to that effect in CACS. We reviewed the CACS system for any evidence that the DOF ECB case collections staff had worked on these cases, such as notations in CACS that they had attempted to call or locate a respondent, had received a call from a respondent, or had attempted to locate assets upon which a levy or a lien could be imposed. We found notes in CACS of staff action or an indication in AIMS that the case had been resolved for only 47 (31.33%) of the 150 cases we reviewed. There were no paper files to review for these 150 cases.

Based on our review of these 150 cases, we project that DOF did not work on 11,973 unresolved BARAMIS cases, or 68.67 percent of the 17,436 BARAMIS cases forwarded by ECB to DOF during Fiscal Year 2001.¹ We estimate that the value of the unresolved and unworked Fiscal Year 2001 BARAMIS cases was, therefore, about \$24.7 million (68.67% of the \$36 million in Fiscal Year 2001 BARAMIS penalties). If we assume conservatively that 10 percent of the unresolved and unworked Fiscal Year 2001 BARAMIS cases could have been collected with a more substantial effort by DOF, then we estimate that over \$2.4 million in additional BARAMIS penalties could have been collected during Fiscal Year 2001.

In addition, by not working on the older BARAMIS cases, DOF is ignoring \$158 million in penalties (\$151 million in docketed cases and \$7 million in undocketed cases). If we assume conservatively that three percent of the older BARAMIS cases could have been collected with an enhanced effort by DOF, then we estimate that over \$4.7 million in additional BARAMIS case penalties (3% of \$158 million) could have been collected on these cases during Fiscal Year 2001.

If we add the additional potential revenue estimates noted above of approximately \$8.0 million in current AVPS penalties, \$11.1 million in older AVPS penalties, \$2.4 million in current BARAMIS penalties, and \$4.7 million in older BARAMIS penalties, we derive a conservative estimate of \$26.2 million in additional ECB case penalties that could have been collected with a more substantial effort by DOF during Fiscal Year 2001. This estimate is based on DOF expanding its own collection efforts on ECB cases. The following section discusses the potential revenue that could be obtained if DOF referred the older cases to a private collection agency.

¹We are 95 percent confident (+/- 7.39% precision) that DOF took no action on 11,973 (68.67%) of the 17,436 BARAMIS cases that DOF received from ECB during Fiscal Year 2001. In other words, we believe that the actual number of Fiscal Year 2001 BARAMIS cases with a balance due that DOF did not work on lies between 10,684 cases (61.28%) and 13,261 cases (76.06%) of the population of 17,436 cases.

**DOF Has Not Awarded
an ECB-Case-Specific Contract
for Collection Efforts on Older ECB Cases**

In our audit report on ECB issued on January 25, 2000, we recommended that DOF “develop and implement a plan to refer and/or sell these [older ECB] cases to private collection agencies.” However, not only has DOF not worked on most of these older cases, but DOF has also not awarded an ECB-case-specific contract on these cases to a private collection agency. DOF has included a provision in contracts being awarded to support its Parking Violations Bureau and tax warrant collection efforts that would permit DOF to also refer “other judgments” to the contractors. However, this provision is clearly peripheral to the main purpose of these contracts and does not specifically refer to ECB cases. A contract that is awarded specifically for the collection of older ECB cases would likely be much more successful in improving the City’s ECB case collection efforts. Alternatively, DOF could sell these older cases to a collection agency for a lump sum.

Since DOF itself takes little or no action on older ECB cases, by not referring these cases to collection agencies, DOF is essentially abandoning all efforts to obtain this revenue for the City. If we assume conservatively that a private agency could have collected three percent of the \$372 million in AVPS cases and the \$158 million in BARAMIS cases that were more than one year old, then at least \$15.9 million (3% of \$530 million) could have been collected on these cases during Fiscal Year 2001. Even after providing the contractor a 20 percent commission on this amount, the City still could have realized \$12.7 million in additional revenue.

Table I presents our estimates on the potential revenue that DOF could collect either by enhancing its own collection efforts or by awarding an ECB-case-specific contract to a private collection agency.

Table I

Summary of Potential Revenue

	Category of Uncollected Revenue	Total Uncollected Revenue	Estimated Revenue through Enhanced DOF Efforts	Estimated Revenue through Enhanced DOF Efforts <u>Plus</u> Use of Collection Agency
1	Current AVPS	\$80 million	\$8 million ^a	Same
2	Older AVPS	\$372 million	\$11.1 million ^b	\$8.9 million ^c
3	Current BARAMIS	\$24 million	\$2.4 million ^a	Same
4	Older BARAMIS	\$158 million	\$4.7 million ^b	\$3.8 million ^c
Total		\$634 million	\$26.2 million	\$23.1 million

^a Based on an estimate that 10 percent of the total uncollected revenue is collectable.

^b Based on an estimate that three percent of the total uncollected revenue is collectable.

^c Based on a collection commission rate of 20 percent being applied to the estimated revenue for this category.

**The CACS System Data on ECB Cases
Are Not Consistently Updated**

DOF Computer-Assisted Collection System data are not consistently updated to include BARAMIS case status changes noted in the ECB AIMS system. DOF officials informed us that they regularly receive computer tapes from ECB that contain updates on the status of ECB cases previously forwarded to DOF. The updates provide information on case status changes, such as the respondent having paid the penalty on a case, the violation having been dismissed, or a case having been docketed.²

In our review of 150 randomly-selected BARAMIS cases, there were 17 instances in which ECB's AIMS showed that the respondent had paid the penalty or that the violation had been dismissed subsequent to the case having been referred to DOF, but for those 17 cases, DOF's CACS still stated that the penalty was outstanding. The range of time from the dates indicated in AIMS that the respondents paid these penalties or that these violations were dismissed, to the dates on which we checked the corresponding information for these cases in CACS was from three to 16 months. Therefore, there was ample time for this information to have been updated in CACS. Outdated information in CACS can confuse respondents if they receive dunning notices from DOF after they paid the penalty or after the violation was dismissed. Such information can also create

² A docketed case is one in which there has been a recording of a legal judgment against a respondent in court. Only docketed cases can be legally enforced. Docketing permits such actions as the placement of a levy or a lien on a respondent's property.

inefficiencies in DOF to the extent that its staff works on cases that have already been resolved.

There were also 67 instances in which ECB's AIMS showed that the case had been docketed subsequent to the case being referred to DOF, but for which DOF's CACS still indicated that the case was undocketed. The range of time, from the dates shown in AIMS that the cases were docketed to the dates on which we checked the corresponding information in CACS for these cases, was from five to 27 months. Therefore, there was ample time for this information to have been updated in CACS. The failure to update CACS to show that cases have been docketed subsequent to referral to DOF is particularly significant because the DOF ECB case collections unit staff informed us that they are much more likely to work on a docketed case than on an undocketed one.

DOF Has Not Consistently Mailed Dunning Notices to Respondents

DOF officials informed us that after the agency receives a BARAMIS case from ECB, the respondent is mailed two dunning notices for a docketed case and one dunning notice for an undocketed case (in addition to the dunning notices already sent by ECB). DOF's contractor handles this responsibility. The only evidence that the notices have been sent are case entries in CACS showing the dates the notices were sent. Of the 150 randomly-selected BARAMIS cases we reviewed, there was no evidence in CACS that the required notices had been sent for 107 (71%) of the 150 cases. Therefore, there is no evidence that an important procedure in the DOF ECB case collection efforts is being followed or that the contractor is meeting its responsibility for mailing dunning notices.

Recommendations

The audit resulted in eight recommendations, including the following six:

The Department of Finance should:

- Request, obtain, and review computer tapes from ECB containing AVPS cases.
- Initiate a substantial effort to collect payments on AVPS cases.
- Significantly enhance its efforts to review and collect payments on BARAMIS cases.
- Award a contract that specifically involves the referral of older ECB cases for further collection efforts. Alternatively, DOF could sell these older cases to a collection agency for a lump-sum.

- Periodically review a sample of ECB cases in ECB's AIMS and DOF's CACS to determine whether it is receiving updated case information from ECB in a timely manner and whether DOF's contractor is properly downloading this information into CACS.
- Periodically review a sample of ECB cases in CACS to determine whether the contractor is mailing dunning notices as required.

DOF Response

The matters covered in this report were discussed with DOF officials during and at the conclusion of this audit. A preliminary draft report was sent to DOF officials on April 25, 2002 and discussed at an exit conference held on May 8, 2002. On May 23, 2002, we submitted a draft report to DOF officials with a request for comments. We received a written response from DOF on June 7, 2002.

In its response, DOF stated that it "agree[s] with the draft audit's main conclusion that the collection rate on ECB debt has been unacceptably low." DOF also stated that "the draft contains useful observations and recommendations that will help Finance improve its efforts to collect delinquent ECB debt" and that it "agree[s] with most of the draft audit's specific recommendations." However, citing "the poor quality of ECB debt," DOF questioned our estimate that \$26.2 million could be collected through an enhanced DOF collection effort on these cases. Nonetheless, DOF stated that it is "optimistic that Finance, working closely with ECB, can boost the collection rate and significantly increase ECB revenue." DOF stated that it will "work with ECB to improve the enforceability of its fines, in part by applying some of the strategies that Finance has used to improve the enforceability of parking fines. For example, we will provide more feedback to issuing agencies in cases where the information necessary to enforce summonses has not been properly recorded."

The full text of DOF's comments is included as an Addendum to this report.

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Upon the receipt of ECB cases on a computer tape, DOF procedures require a computer-system-generated mailing of at least one dunning notice, followed by an effort to contact the respondent by phone, an attempt to identify the respondent's assets, and a referral, if appropriate, to the DOF legal affairs unit. Depending on the nature of the case, the legal affairs unit then either initiates an execution of the judgment by the Sheriff's Office or a docketing of the case in court by the City Law Department.

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In conducting this audit, we interviewed DOF officials and employees involved with efforts to collect ECB case penalties and reviewed DOF's written procedures for these efforts and other relevant documentation, including reports, contracts, agreements, case files, and database printouts. We also examined a random sample of 150 ECB cases of the 17,436 cases forwarded by ECB on computer tapes to DOF during Fiscal Year 2001. We reviewed information on these cases in the ECB Adjudication Information Management System (AIMS) and in the DOF Computer-Assisted Collection System (CACS).

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recommendations.” However, citing “the poor quality of ECB debt,” DOF questioned our estimate that \$26.2 million could be collected through an enhanced DOF collection effort on these cases. Nonetheless, DOF stated that it is “optimistic that Finance, working closely with ECB, can boost the collection rate and significantly increase ECB revenue.” DOF stated that it will “work with ECB to improve the enforceability of its fines, in part by applying some of the strategies that Finance has used to improve the enforceability of parking fines. For example, we will provide more feedback to issuing agencies in cases where the information necessary to enforce summonses has not been properly recorded.”

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**OFFICE OF THE COMPTROLLER
NEW YORK CITY**

DATE FILED: June 25, 2002

FINDINGS AND RECOMMENDATIONS

The Environmental Control Board has reported that the Department of Finance collected about \$8 million on ECB cases from July 1996 (when DOF assumed responsibility for final-stage collection efforts) through Fiscal Year 2001. DOF has also addressed two of the three recommendations made in our previous audit report on ECB that related to DOF. As recommended in the previous audit, DOF and ECB have prepared a written agreement delineating each agency's penalty collection responsibilities, and DOF has begun to provide reports to ECB on the cases it receives from ECB and on some of the results of its collection efforts.

However, DOF has not seriously addressed the recommendation of the previous audit that it refer or sell its older ECB cases to a private collection agency. This audit has also identified several other significant concerns about DOF's collection efforts, which are discussed in detail below.

DOF Collection Efforts Have Been Insufficient

The DOF collection efforts for ECB cases have been insufficient, as summarized below:

- DOF has made minimal collection efforts on a large proportion of its ECB cases;
- DOF has not awarded a contract to a private agency specifically for the collection of penalties imposed in older ECB cases;
- The data in DOF's CACS system are not consistently updated to include case status changes noted by ECB in its AIMS system; and
- DOF has not consistently mailed the required dunning notices to respondents.

DOF Collection Efforts on a Large Proportion of its ECB Cases Have Been Minimal

DOF has made minimal collection efforts on a large proportion of its ECB cases. We estimate that an enhanced collection effort could help the City collect \$26.2 million in additional revenue.

The final-stage penalty collection effort begins after the ECB hearing and dunning notice processes have been completed and ECB forwards the case to DOF. ECB sends case information to DOF in three ways: 1) ECB forwards microfilmed lists of those cases that ECB

has referred to civil courts for automatic docketing;¹ 2) ECB mails documentation on certain cases to DOF; and 3) ECB provides computer tapes of certain other cases in its AIMS system that a DOF contractor downloads into the DOF CACS system. A case may be sent by more than one of these methods.

The microfilmed lists that DOF receives from ECB include docketed cases known as “AVPS” and “BARAMIS” cases. These acronyms refer to computer systems that ECB used until July 1999 to track most of its cases. Although these systems were replaced by the AIMS system, the acronyms are still used to distinguish cases that do not require corrective action by the respondent—the AVPS cases—from those that do require such action—the BARAMIS cases. However, DOF makes limited use of the microfilmed lists in its ECB case collection efforts. In addition, those cases that ECB mails to DOF (known as manual cases) constitute only a very small proportion of DOF’s ECB caseload.

Therefore, DOF works primarily on the cases that ECB forwards on computer tapes. However, ECB forwards only BARAMIS cases on these tapes. Although ECB could also forward computer tapes on AVPS cases, DOF officials have informed us that they do not request such tapes. During our previous audit of ECB, DOF officials explained that they worked on the BARAMIS cases rather than on the AVPS cases because the BARAMIS system had much better case tracking capabilities than the AVPS computer system. However, ECB replaced both systems in July 1999 with the AIMS system, which provides better case tracking capabilities and allows for the production of computer tapes to enable DOF to download information on both types of cases into its CACS system. During this audit, DOF officials have provided a different explanation. They stated that that DOF does not work on AVPS cases because it does not have enough staff. DOF’s contract with the vendor it uses to download ECB cases into the CACS system calls for the vendor to handle only computer tapes of BARAMIS cases.

AVPS Cases

The decision to virtually ignore AVPS cases means that DOF made almost no effort to collect more than \$452 million in AVPS case penalties. The DOF collection unit works on AVPS cases only when it searches AIMS (through its read-only access) for AVPS cases relating to the same respondent for which a BARAMIS case is being sent to the DOF legal office for further action. DOF did not work on \$80 million owed in docketed AVPS cases that were received during Fiscal Year 2001; nor did it work on \$372 million owed in docketed AVPS cases that were more than one year old and still collectible during Fiscal Year 2001.² If we assume conservatively that 10 percent of the current AVPS cases, or \$8.0 million (10% of the \$80 million owed), could have been collected through a concerted effort by DOF, and that three percent of the older AVPS cases, or over \$11.1 million (3% of the \$372 million owed), could have been collected, we estimate that at least \$19.1 million owed in docketed AVPS cases could have been collected during Fiscal Year 2001. In addition, DOF did not work on \$150,000 owed

¹Automatic docketing is the recording of a legal judgment against a respondent without the necessity of holding a court hearing. Only docketed cases can be legally enforced. Docketing permits such actions as the placement of a levy or a lien on a respondent’s property.

²The statute of limitations for docketed ECB cases is eight years following the date of docketing.

in undocketed AVPS cases that were current in Fiscal Year 2001;³ nor did it work on \$100,000 owed in undocketed AVPS cases that were more than one year old and still collectible during Fiscal Year 2001.⁴ Applying the same collection rate estimates to these amounts would yield an additional \$18,000 (10% of \$150,000 plus 3% of \$100,000).

BARAMIS Cases

DOF works primarily on current BARAMIS cases. Cases that are more than one year old are generally placed automatically in an inactive status within CACS. The majority of the 17,436 BARAMIS cases that DOF received from ECB during Fiscal Year 2001, with a total value of about \$36 million (\$31 million in docketed cases, and \$5 million in undocketed cases), had not been worked on by DOF as of January 16, 2002 (the first day we had access to CACS). We randomly selected and reviewed 150 of these cases and found that DOF staff did not work on over 68 percent of them.

The DOF staff that works on ECB case collections informed us that if they worked on a case, there would be a note to that effect in CACS. We reviewed the CACS system for any evidence that the DOF ECB case collections staff had worked on these cases, such as notations in CACS that they had attempted to call or locate a respondent, had received a call from a respondent, or had attempted to locate assets upon which a levy or a lien could be imposed. We found notes in CACS of staff action or an indication in AIMS that the case had been resolved for only 47 (31.33%) of the 150 cases we reviewed. There were no paper files to review for these 150 cases. The staff informed us that the only paper files that DOF maintains on BARAMIS cases are for those that the staff has forwarded to the DOF legal office for further action. During Fiscal Year 2001, only 101 of the 17,436 BARAMIS cases were forwarded to the DOF legal office for further action. None of these 101 cases appeared in our randomly-selected sample of 150 cases. (We discuss these 101 cases separately below.) Therefore, CACS was the only available source of information by which we could determine the extent to which DOF worked on the 150 cases in our sample.

Based on our review of these 150 cases, we project that DOF did not work on 11,973 unresolved BARAMIS cases, or 68.67 percent of the 17,436 BARAMIS cases forwarded by ECB to DOF during Fiscal Year 2001.⁵ We estimate that the value of the unresolved and unworked Fiscal Year 2001 BARAMIS cases was, therefore, about \$24.7 million (68.67% of the \$36 million in Fiscal Year 2001 BARAMIS penalties). If we assume conservatively that 10 percent of the unresolved and unworked Fiscal Year 2001 BARAMIS cases could have been

³Undocketed cases are those that are not eligible for automatic docketing by the court either because they involve a violation penalty amount of more than \$25,000 or because the manner in which the NOV was served on the respondent by the issuing agency prevented automatic docketing. However, an undocketed case can be individually docketed by the City in court.

⁴The statute of limitations for undocketed ECB cases is three years following the ECB hearing decision date, the default order date, or the date of the last ECB action on the case.

⁵We are 95 percent confident (+/- 7.39% precision) that DOF took no action on 11,973 (68.67%) of the 17,436 BARAMIS cases that DOF received from ECB during Fiscal Year 2001. In other words, we believe that the actual number of Fiscal Year 2001 BARAMIS cases with a balance due that DOF did not work on lies between 10,684 cases (61.28%) and 13,261 cases (76.06%) of the population of 17,436 cases.

collected with a more substantial effort by DOF, then we estimate that over \$2.4 million in additional BARAMIS penalties could have been collected during Fiscal Year 2001.

In addition, by not working on the older BARAMIS cases, DOF is ignoring \$158 million in penalties (\$151 million in docketed cases and \$7 million in undocketed cases). If we assume conservatively that three percent of the older BARAMIS cases could have been collected with an enhanced effort by DOF, then we estimate that over \$4.7 million in additional BARAMIS case penalties (3% of \$158 million) could have been collected on these cases during Fiscal Year 2001.

Estimate of Additional Potential Revenue on AVPS and BARAMIS Cases

If we add the additional potential revenue estimates noted above of approximately \$8.0 million in current AVPS penalties, \$11.1 million in older AVPS penalties, \$2.4 million in current BARAMIS penalties, and \$4.7 million in older BARAMIS penalties, we derive a conservative estimate of \$26.2 million in additional ECB case penalties that could have been collected with a more substantial effort by DOF during Fiscal Year 2001.

Manual Cases

During the scope of our audit, ECB mailed documentation to DOF for three types of cases, collectively known as “manual cases,” that were not tracked by AIMS. These undocketed cases are hazardous materials, right-to-know, and single room occupancy cases.⁶

The manual cases represent only a very small proportion of the ECB case workload. DOF informed us that in Fiscal Year 2001 it received only seven manual cases from ECB, which were single room occupancy cases with a total value of about \$50,000. However, ECB informed us that in Fiscal Year 2001 it sent 57 manual cases to DOF and that they were hazardous materials and right-to-know cases with a total value of about \$850,000. DOF also informed us that in Fiscal Year 2000, it received seven single room occupancy cases valued at about \$100,000, six hazardous materials cases valued at about \$150,000, and 50 right-to-know cases valued at about \$50,000, for a total of about \$300,000. ECB informed us that in Fiscal Year 2000, it sent 65 manual cases to DOF, all of which were right-to-know cases with a total value of about \$150,000. Both DOF and ECB agreed that no manual cases were referred during Fiscal Year 1999. Since there is substantial disagreement on the numbers and types of manual cases that ECB has referred to DOF, it is clear that the communication between DOF and ECB on manual cases has been less than optimal.

Referrals to the DOF Legal Affairs Office

In a related matter, the DOF ECB case collections unit, as noted above, forwarded 101 cases to the DOF legal affairs office for further action during Fiscal Year 2001—68 docketed cases for execution by the Sheriff’s Office and 33 undocketed cases for individual case docketing

⁶In Fiscal Year 2002, ECB began tracking new hazardous materials and right-to-know cases in AIMS. Single room occupancy cases are still handled manually.

by the City Law Department. The DOF legal office referred all 68 cases to the Sheriff's Office, which is also part of the Department of Finance. Of these 68 cases, the Sheriff's Office was able to obtain full payment in 18 cases and partial payment in one case. The DOF legal office stated in writing that it referred 30 of the 33 undocketed cases to the Law Department for individual case docketing. However, the DOF legal office received no regular feedback from the Law Department concerning its action on these cases.

In response to our request for copies of status reports that the DOF legal office had received from the Law Department on these cases, the legal office only provided us (three weeks after our request) with handwritten notes that were added to copies of case lists that the legal office had previously prepared for, and provided to, us. This indicated to us that these notes were added to these lists in response to our request, and that prior to our request the legal office had limited information from the Law Department about the status of these cases. The handwritten notes indicated that none of the 30 cases referred to the Law Department had been paid or individually docketed in court. If the DOF legal office had ensured that the Law Department regularly provided information on the status of these cases and on the problems it was experiencing in trying to docket or collect on them, then the legal office would have been in a better position to assist the Law Department in its efforts. In fact, the handwritten notes indicate that for 10 of the 30 cases, the Law Department had "no record of claim" and that for one case it had "never received supporting docs [documentation]."

Recommendations

We recommend that the Department of Finance:

1. Request, obtain, and review computer tapes from ECB containing AVPS cases.

DOF Response: "Finance will request, obtain, and review computer tapes from ECB containing AVPS cases."

2. Initiate a substantial effort to collect payments on AVPS cases.

DOF Response: "Finance will undertake a substantial effort to collect on AVPS cases. ... We will also contract with a credit rating firm to send separate letters to some violators."

3. Significantly enhance its efforts to review and collect payments on BARAMIS cases.

DOF Response: "Finance will build on the progress we have made recently on BARAMIS cases. In the last year, we have doubled our BARAMIS collections."

4. Improve its communications with the ECB on the manual cases.

DOF Response: “Finance plans to improve communications with ECB on manual cases by incorporating statistics indicating the number of hazardous materials, right-to-know, and single room occupancy cases received in the monthly report we already provide to ECB.”

5. Request that the City Law Department regularly report the status of the undocketed ECB cases that the DOF legal office has referred to the Law Department for individual case docketing.

DOF Response: “Finance will ask the Law Department to segregate ECB cases in its reports to us.”

DOF Has Not Awarded an ECB-Case-Specific Contract for Collection Efforts on Older ECB Cases

DOF has not awarded an ECB-case-specific contract to a private agency for collection efforts on older ECB cases. Since DOF itself takes little or no action on older ECB cases, by not referring these cases to collection agencies, DOF is essentially abandoning all efforts to obtain this revenue for the City. Although collection agencies would receive commissions on what they collect, using collection agencies would help the City to at least realize some revenue on older ECB cases. We conservatively estimate that this revenue could have been as much as \$12.7 million in Fiscal Year 2001.

In our audit report on ECB issued on January 25, 2000, we recommended that DOF “develop and implement a plan to refer and/or sell these [older ECB] cases to private collection agencies.” DOF has included a provision in contracts being awarded to support its Parking Violations Bureau and tax warrant collection efforts that would permit DOF to also refer “other judgments” to the contractors. However, this provision is clearly peripheral to the main purpose of these contracts and does not specifically refer to ECB cases. A contract that is awarded specifically for the collection of older ECB cases would likely be much more successful in improving the City’s ECB case collection efforts. Alternatively, DOF could sell these older cases to a collection agency for a lump sum.

If we assume conservatively that a private agency could have collected three percent of the \$372 million in AVPS cases and the \$158 million in BARAMIS cases that were more than one year old, then at least \$15.9 million (3% of \$530 million) could have been collected on these cases during Fiscal Year 2001. Even after providing the contractor a 20 percent commission on this amount, the City still could have realized \$12.7 million in additional revenue.

In a special effort, DOF arranged for Dun & Bradstreet to supplement DOF efforts by mailing 47,159 ECB billing letters on October 1, 2001. DOF partly attributes an ECB-reported increase in DOF collections on ECB cases during Fiscal Year 2002, to a total of \$3.2 million as of March 31, 2002, to this special effort. We commend DOF regarding this special effort and

suggest that an ECB-case-specific contract with a collection agency to regularly supplement DOF's efforts would likely produce even more positive results.

Recommendation

6. DOF should award a contract that specifically involves the referral of older ECB cases for further collection efforts. Alternatively, DOF could sell these older cases to a collection agency for a lump-sum.

DOF Response: "Finance will refer ECB cases to one or more of the four collection agencies that were recently awarded contracts. ... These contracts provided for the collection of various City debts, including ECB judgments. Based on our experience, we do not believe that a specific ECB collection contract would provide any benefits."

Auditors' Comments: While we recognize that DOF plans to supplement its ECB case collection efforts by referring ECB cases to collection agencies that were recently awarded parking violation and tax warrant collection contracts, we continue to believe that a collection contract awarded for the specific purpose of supporting DOF's ECB case collection efforts would be more fruitful. We believe that the primary focus of DOF's parking violation and tax warrant contractors will be parking violation and tax warrant cases, not ECB cases that are not specifically referred to in their contracts. However, DOF's use of its parking violation and tax warrant contractors to supplement its ECB case collection efforts would be an appropriate interim measure.

CACS System Data on ECB Cases Are Not Consistently Updated

DOF CACS system data are not consistently updated to include BARAMIS case status changes noted in the ECB AIMS system. DOF officials informed us that they regularly receive computer tapes from ECB that contain updates on the status of ECB cases previously forwarded to DOF. The updates provide information on case status changes, such as the respondent having paid the penalty on a case, the violation having been dismissed, or a case having been docketed.

In our review of 150 randomly-selected BARAMIS cases, there were 17 instances in which ECB's AIMS showed that the respondent had paid the penalty or that the violation had been dismissed subsequent to the case having been referred to DOF but that DOF's CACS still stated that the penalty was outstanding. The range of time from the dates indicated in AIMS that the respondents paid these penalties or that these violations were dismissed, to the dates on which we checked the corresponding information for these cases in CACS was from three to 16 months. Therefore, there was ample time for this information to have been updated in CACS.

There were also 67 instances in which ECB's AIMS showed that the case had been docketed subsequent to the case being referred to DOF, but for which DOF's CACS still indicated that the case was undocketed. The range of time, from the dates shown in AIMS that

the cases were docketed to the dates on which we checked the corresponding information in CACS for these cases, was from five to 27 months. Therefore, there was ample time for this information to have been updated in CACS. The failure to update CACS to show that cases have been docketed subsequent to referral to DOF is particularly significant because the DOF ECB case collections unit staff informed us that they are much more likely to work on a docketed case than on an undocketed one.

We did not determine why this information was not properly updated in CACS. ECB and DOF's contractor may share responsibility for this. However, it is incumbent upon DOF to ensure that its CACS information is as current as possible. With its read-only access to AIMS, DOF is in a position to periodically check whether it is receiving updated case information from ECB in a timely manner and whether DOF's contractor is properly downloading this information into CACS. Outdated information in CACS can confuse respondents if they receive dunning notices from DOF after they paid the penalty or after the violation was dismissed. Such information can also create inefficiencies in DOF to the extent that its staff works on cases that have already been resolved or does not work on certain docketed cases because they believe that they are undocketed.

Recommendation

7. DOF should periodically review a sample of ECB cases in ECB's AIMS and DOF's CACS to determine whether it is receiving updated case information from ECB in a timely manner and whether DOF's contractor is properly downloading this information into CACS.

DOF Response: "Finance will periodically review a sample of ECB cases in ECB's AIMS system and our own CACS system. Such a review will help us determine whether we are receiving updated case information from ECB in a timely manner and whether our contractor is properly downloading information from AIMS into CACS."

DOF Has Not Consistently Mailed Dunning Notices to Respondents

DOF officials informed us that after the agency receives a BARAMIS case from ECB, the respondent is mailed two dunning notices for a docketed case and one dunning notice for an undocketed case (in addition to the dunning notices already sent by ECB). DOF's contractor handles this responsibility. The only evidence that the notices have been sent are case entries in CACS showing the dates the notices were sent. Of the 150 randomly-selected BARAMIS cases we reviewed, there was no evidence in CACS that the required notices had been sent for 107 (71%) of the 150 cases. Therefore, there is no evidence that an important procedure in the DOF ECB case collection efforts is being followed or that the contractor is meeting its responsibility for mailing dunning notices.

After the exit conference, DOF questioned us on 35 of these cases. It stated that there were no addresses in AIMS on 18 of these cases, that notices were sent on seven cases, and that 10 cases had never been docketed. Our review of these cases led to the following result:

- For the 18 cases for which DOF states there were no addresses in AIMS: Although the addresses of the owners were not in either AIMS or CACS, the addresses of the violations were in AIMS (but not in CACS). When there are no addresses for the respondents in AIMS, DOF could obtain the addresses of the violations from AIMS and send dunning notices to these addresses. ECB follows this approach in its mailing of dunning notices.
- For the seven cases for which DOF states that notices were sent: These cases are docketed cases for which two dunning notices should have been sent. However, while two notices had in fact been sent in one of the seven cases, only one notice was sent in each of the remaining six cases.
- For the 10 cases for which DOF states that the cases had not been docketed: We note that DOF procedures state that one dunning notice should be sent for undocketed cases. In our review of these 10 cases, we determined that while one notice had been sent in one case, notices had not been sent for any of the remaining nine cases.

Recommendation

8. DOF should periodically review a sample of ECB cases in CACS to determine whether the contractor is mailing dunning notices as required.

DOF Response: “Finance will periodically review a sample of ECB cases in CACS to determine whether the required mailing notices are being generated. ... We have ... programmed CACS to mail notices to a violation address even if the respondent’s address is incomplete. As a result of these programming changes, we have sent 18,000 notices, which we expect will generate about \$500,000 in collection revenue.”



FINANCE
NEW * YORK
MARTHA E. STARK
COMMISSIONER

June 7, 2002

Roger D. Liwer
Deputy Comptroller for Audits
Office of the New York City Comptroller
1 Centre St, Room 1100 North
New York, New York 10007-2341

Delivered by Hand

**RE: Draft Audit Report on the Department of Finance's Collection
of Penalties Imposed in Environmental Control Board Cases
Audit Number: MG02-118A**

Dear Mr. Liwer:

Thank you for the opportunity to review the draft audit report on the Department of Finance's collection of penalties imposed by the Environmental Control Board (ECB). The draft contains useful observations and recommendations that will help Finance improve its efforts to collect delinquent ECB debt.

I agree with the draft audit's main conclusion that the collection rate on ECB debt has been unacceptably low. And I agree that the Department of Finance can do more to raise this collection rate, notwithstanding the very low quality of ECB debt, particularly ECB debt that is more than a year old. I also agree with most of the draft audit's specific recommendations.

Furthermore, I am optimistic that Finance, working closely with ECB, can boost the collection rate and significantly increase ECB revenues. Because of the poor quality of ECB debt, I believe that the collection revenue target set forth in the draft audit -- \$26.2 million -- is too high. But given the seriousness of these violations, Finance is determined to collect as much ECB debt as possible.

In this response, I will:

- Describe how Finance intends to work with ECB to improve the collection rate
- Address the draft audit's specific recommendations
- Demonstrate why the \$26.2 million revenue target is unrealistic
- Describe recent improvements in ECB collections

FINANCE INTENDS TO EXPLORE EVERY POSSIBLE OPTION TO INCREASE THE COLLECTION RATE OF ECB DEBT. Our efforts will include:

Contracting with collection agencies

I expect collection agency contracts to be in place within a month. Finance will turn over much of the newer ECB debt – on both fines not requiring corrective action (AVPS) and fines that do require corrective action (BARAMIS) -- to these collection agencies. Recommendation #6 of the draft audit suggested that Finance enter into a specific ECB collection contract, but I do not see any benefit in doing so. Instead, Finance will refer ECB cases to one or more of the four collection agencies that were recently awarded contracts.

Working with ECB to make fines more enforceable

I believe that we can work with ECB to improve the enforceability of its fines, in part by applying some of the strategies that Finance has used to improve the enforceability of parking fines. For example, we will provide more feedback to issuing agencies in cases where the information necessary to enforce summonses has not been properly recorded. Working with parking ticket issuers, Finance has improved the processability of parking summonses by 17 percent over 10 years. Since most of the impediments to effective collection of ECB fines result from the incorrect identification of respondent's names and addresses, I believe that ECB summonses will benefit from this approach.

I AGREE WITH MOST OF THE DRAFT AUDIT'S SPECIFIC RECOMMENDATIONS.

- **Finance will request, obtain, and review computer tapes from ECB containing AVPS cases.**
- **Finance will undertake a substantial effort to collect on AVPS cases.** In addition to continuing to mail sheriff's letters to violators, Finance will soon begin referring these cases to one or more collection agencies, as described above. We will also contract with a credit rating firm to send separate letters to some violators.
- **Finance will build on the progress we have made recently on BARAMIS cases.** In the last year, we have doubled our BARAMIS collections and fixed the computer problem that had prevented docket dates from appearing in our case tracking system.
- **Finance plans to improve communications with ECB on manual cases** by incorporating statistics indicating the number of hazardous materials, right-to-know, and single room occupancy cases received into the monthly report we already provide to ECB.
- **Finance will ask the Law Department to segregate ECB cases in its reports to us.** Currently, these reports describe the status of undocketed ECB cases that Finance's Office of Legal Affairs has referred to the Law Department for case docketing, as well as non-ECB matters.

- **As noted above, Finance plans to refer older ECB cases to one or more of the four collection agencies that have been awarded contracts.** These contracts provide for the collection of various City debts, including ECB judgments. Based on our experience, we do not believe that a specific ECB collection contract would provide any benefits.
- **Finance will periodically review a sample of ECB cases in ECB's AIMS system and our own CACS system.** Such a review will help us determine whether we are receiving updated case information from ECB in a timely manner and whether our contractor is properly downloading information from AIMS into CACS.
- **Finance will periodically review a sample of ECB cases in CACS** to determine whether the required mailing notices are being generated.

THE DRAFT AUDIT'S \$26.2 MILLION ECB COLLECTION TARGET MAY BE TOO HIGH

Without wavering in my commitment to improve the collection of ECB debt, I think it is only fair that I describe why I believe the draft audit's \$26.2 million collection target might be unrealistic.

The City collects about 70 percent of the face value of the fines issued for ECB violations, through direct payments and ECB's adjudications process. ECB then attempts to collect outstanding debt for several months before turning these cases over to Finance for collection. The debt we receive is of poor quality compared to other debt that Finance collects, for several reasons:

- A large number of the violations do not properly identify the party responsible for paying and/or correcting the violation. This is particularly true of fines issued to street vendors, which comprise about 20 percent of all AVPS cases.
- Many violations name the respondent as "Owner of" the address in question rather than naming the owner as required.
- Other violations are written against a "doing business as" name instead of the corporate entity that is responsible for the debt.
- Still others have an incomplete or misspelled name.
- Many of the violations are not properly served and thus cannot be enforced.

We will put forth our best effort to collect this debt. However, given these problems, as well as our experience collecting ECB and parking debt, I believe that the draft audit's estimates of ECB collection rates – even at three percent for older debt and 10 percent for debt less than a year old – are optimistic.

FINANCE HAS IMPROVED ECB COLLECTIONS

Finance has made modest strides to collect more ECB debt.

- Since April 1999, Finance has mailed more than 400,000 letters from the Office of the Sheriff to AVPS violators, resulting in the collection of \$1.9 million.
- Starting last July, Finance contracted with a well-known credit rating agency to send 50,000 letters to BARAMIS violators. As a result, we expect to collect more than \$4 million in FY02 -- more than double what was collected in FY01. We plan to replicate this effort in FY '03 for AVPS cases, and we expect similar results.
- As mentioned above, we have fixed the problem of missing docket dates in our case tracking system and have programmed CACS to mail notices to a violation address even if the respondent's address is incomplete. As a result of these programming changes, we have sent 18,000 notices, which we expect will generate about \$500,000 in collection revenue.

This concludes my response to the draft audit. Thank you again for the opportunity to review and comment on it. If you have any questions or require additional information, please feel free to call me at (212) 669-4855, or Jesse Ostrow at (212) 669-4480.

Sincerely,

Martha E Stark

Martha E. Stark
Commissioner

CC: Commissioner Ward, DEP
Jesse Ostrow, Finance