

LEGISLATIVE AUDIT REPORT

West Virginia Department of Environmental Protection - Division of Water and Waste Management

FOR THE PERIOD JULY 1, 2005 - JUNE 30, 2007

AUDIT SCOPE

- (a) Revenues in DWWM Funds 3023, 3206, 3218, 3220, 3325, 3327 (FY 2006-2009 only), 3328, 3331, 3332, 3333, 3337, & 3340 during FY 2006-2010
- (b) Investment Earnings for DWWM Funds 3023, 3206, 3218, 3220, 3222, 3325, 3326, 3327, 3328, 3329, 3331, 3332, 3333, 3337, 3340, & 3342 for fiscal years 2006-2010
- (c) Leave expenditures for the period of July 1, 2005 – April 30, 2010 for employees paid from DWWM Funds including Funds 3329 & 3342
- (d) Operating, Statutory, & Fund Transfers made with DWWM Funds, except for Funds 3329 & 3342, during FY 2006-2010
- (e) Workers Comp. Premium payments for the agency as a whole during FY 2009
- (f) Expenditures for Contracts, Telecommunication, Unemployment, Vendors receiving over \$25,000, & employee benefits for the agency as a whole during FY 2006-2009.



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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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The Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we conducted a post audit of the West Virginia Department of Environmental Protection (DEP), Division of Water and Waste Management (DWWM) for the period July 1, 2005 through June 30, 2007. Previously three reports have been issued for the Division of Water and Waste Management (DWWM): 1) Legislative Rules Not Promulgated for Cost Recoveries (June 2008); 2) Performance Bond Fund, Equipment Purchases and Cash Collections, DWWM Notice of Violations (May 2009); and 3) West Virginia Department of Environmental Protection Division of Water and Waste Management (May 2010). Any deviations from the audit period or from DWWM funds are described in the Scope section. We conducted our audit in accordance with auditing standards generally accepted in the United States, except for the independence impairment discussed in the Opinion section of the Independent Auditor's Report.

Our audit disclosed certain findings which are detailed in this report. The revenues and expenditures for the Clean Water State Revolving Fund (3329 & 3342) Loan Programs will be reported on separately at a later date. Findings which were determined to be inconsequential to the financial operations of the spending unit were discussed with Management. The Spending Unit's management has responded to the audit findings; we have included the responses following each finding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007**

TABLE OF CONTENTS

Independent Auditor’s Report	3
Executive Summary	5
Introduction	16
Post Audit Authority	16
Background	16
Spending Unit Contacts	17
Audit Scope	18
Objectives and Methodologies	18
Conclusion	19
Exit Conference	19
Significant Deficiencies, Reportable Compliance and Other Matters Findings	20
Informational Item 1 – No Audit of the Environmental Resource Information System (ERIS) Database.....	20
Finding 1 – Inability to test WVNPDES Permit Application and Annual Fees	22
Finding 2 – Scope Limitation over Fund 3325 – Underground Storage Tank Administrative Fund	25
Finding 3 – Scope Limitation – Oil & Gas Well Groundwater Protection Fee	27
Finding 4 – Scope Limitation – Surface Mining Groundwater Fees.....	30
Finding 5 – Scope Limitation – Coal Related Dam Certificates	32
Finding 6 – Monies deposited into Incorrect Fund.....	34
Finding 7 – Permit fees not recorded in ERIS	37
Finding 8 – Solid Waste Assessment Fees were not transferred into the Solid Waste Management Board Reserve Fund.....	40
Finding 9 – Appropriating Unauthorized Monies	43
Finding 10 – Improper allocation of funds, improper deposit amounts, & inadequate documentation for Solid Waste Assessment Fees.....	45

Finding 11 – DEP exceeded Administrative Expense Allowance for Fund 3328.....	48
Finding 12 – Loan Repayments deposited into Improper Fund	49
Finding 13 – Misclassified Revenues/Reimbursements	51
Finding 14 – Disbursing restricted Groundwater Protection Fees as unrestricted monies to contracted county health departments.....	54
Finding 15 – No Service/Collections of Septic Tank Registration Seal Fees	56
Finding 16 – Noncompliance with Legislative Rule Title 47 Series 55 Groundwater Protection Act Fee Schedule	58
Finding 17 – Lack of Internal Controls over Agriculture Groundwater Protection Fees	60
Finding 18 – Interest and Late Fee Penalties not Assessed	63
Finding 19 – Overstated Workers Compensation Premiums	65
Finding 20 – Solid Waste Groundwater Protection Fee Non-compliance	69
Finding 21 – Incorrect Reimbursements/Disbursements for Septic Tank Registration Fee Sharing Program	73
Finding 21 – Noncompliance with Dam Safety Rule over collections of fees.....	76
Finding 23 – Report forms were not Provided or Completed	78
Finding 24 – Leave Used/Accrued and not deducted from/added to Leave Balances.....	80
Fund Listing	82
Certificate of Director,	
Legislative Post Audit Division	86

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007**

INDEPENDENT AUDITOR'S REPORT

Post Audit Subcommittee:

Compliance

We have audited the Department of Environmental Protection (hereafter referred to as DEP), Division of Water and Waste Management's (hereafter referred to as DWWM) compliance with the laws, rules, and regulations applicable to (a) revenues in DWWM Funds 3023, 3206, 3218, 3220, 3325, 3327 (fiscal years 2006-2009 only), 3328, 3331, 3332, 3333, 3337, and 3340 during fiscal years 2006-2010, (b) investment earnings for DWWM Funds 3023, 3206, 3218, 3220, 3222, 3325, 3326, 3327, 3328, 3329, 3331, 3332, 3333, 3337, 3340, and 3342 for fiscal years 2006-2010; (c) leave expenditures (annual, sick, holiday, compensation time) for the period of July 1, 2005 – April 30, 2010 for employees paid from DWWM Funds including Funds 3329 & 3342; (d) transfers (Operating, Statutory, and Fund Transfers) made with DWWM Funds, except for Funds 3329 & 3342, during Fiscal Years 2006-2010; (e) Workers Compensation Premium payments for the agency as a whole during Fiscal Year 2009; and (f) expenditures for Contracts, Telecommunication, Unemployment, Vendors receiving over \$25,000, and employee benefits for the agency as a whole during Fiscal Years 2006-2009. The revenues and expenditures related to the various loan programs provided by the Clean Water State Revolving Fund (Funds 3329 & 3342) will be reported on separately at a later date. Compliance with the requirements referred to above is the responsibility of DEP's management. Our responsibility is to express an opinion on the DEP's compliance based on our audit.

Except for the organizational impairment described in the following paragraph, we conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the compliance requirements referred to above could have a material effect on DEP. An audit includes examining, on a test basis, evidence about DEP's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of DEP's compliance with those requirements.

In accordance with W.Va. Code Chapter 4, Article 2, the Post Audit Division is required to conduct post audits of the revenues and expenditures of the spending units of the state government. The Post Audit Division is organized under the Legislative Branch of the State and our audits are reported to the Legislative Post Audit Subcommittee. Therefore, the Division has historically been organizationally independent when audits are performed on an agency, board, or program of the Executive Branch of the State. However, this organizational independence was impaired when the President of the Senate became acting Governor of the State on November 15, 2010, in accordance with W.Va. Code §3-10-2. Audits completed after this date will not comply with auditing standards generally accepted in the United States in regards to organizational independence. Since the President of the Senate is acting Governor, the Executive Branch has the ability to influence the initiation, scope, timing, and completion of any audit. The Executive Branch could also obstruct

audit reporting, including the findings and conclusions or the manner, means, or timing of the audit organization's reports.

In our opinion, except for the noncompliance noted in the findings of this report and the inconsequential items discussed with management, DEP complied, in all material respects, with the compliance requirements referred to above that are applicable during fiscal years 2006 and 2007 and any other time periods mentioned in the Audit Scope section.

Internal Control

Management of DEP is responsible for establishing and maintaining effective internal control over compliance with the compliance requirements referred to above. In planning and performing our audit, we considered DEP's internal control over compliance to determine the auditing procedures for the purpose of expressing our opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the DEP's internal control over compliance.

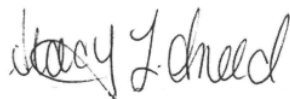
A deficiency in internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their functions, to prevent, or detect and correct, noncompliance on a timely basis. A *material weakness* in internal control over compliance is a deficiency, or combination of deficiencies in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. We considered Findings 1-5 to be material weakness in internal control over compliance.

A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider Findings 1-11, 14-15, & 17 to be significant deficiencies in internal control over compliance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be deficiencies, significant deficiencies, or material weaknesses in internal control over compliance.

This communication is intended solely for the information and use of the Post Audit Subcommittee, the members of the WV Legislature, and management of DEP. However, once released by the Post Audit Subcommittee, this report is a matter of public record and its distribution is not limited.

Respectfully submitted,



Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

April 29, 2011

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007**

EXECUTIVE SUMMARY

Informational Item 1 No Audit of the Environmental Resources Information System (ERIS) Database

- During our Post Audit of the DEP-DWWM, we noted DEP relied heavily on the Environmental Resources Information System (ERIS) to track incoming revenues, billings, permitting, reclamation, and employee timekeeping & leave. ERIS was created as an information system only and was never meant to be an accounting system. However, DEP has adopted ERIS as the official accounting record. Throughout the audit we noted major problem areas within ERIS.

Auditor's Recommendation

We recommend DEP hire an outside auditor who specializes in information technology auditing and provide a copy of the final audit report and DEP's plan of corrective action to the Legislative Post Audit Division.

Spending Unit's Response

ERIS was never intended to be an accounting system and has not been adopted as DEP's official accounting record. WVFIMS is the State and DEP's official accounting system.

See pages 20-21.

Finding 1 Inability to Test WVNPDES Permit Application and Annual Fees

- We were unable to audit approximately \$19.5 million and \$872,000 of NPDES Permit fees and related groundwater fees, respectively during fiscal years 2006-2009 due to a lack of a reliable population. We were unable to trace 197 out of 6,706 permits (2.94%) to a fee in ERIS.
- We noted that the DEP did not charge permit annual fees for Land Application of Sewage Sludge and Stormwater Discharge – Municipal Sewer System.
- In addition to the permits mentioned above, we were unable to trace revenues totaling approximately \$138,635 to the permit databases provided by the DEP.
- DEP lacks sufficient monitoring over WVNPDES Facilities who have had their permit voided for non-payment of the annual fee.

Auditor's Recommendation

We recommend that the DEP comply with W. Va. Code §22-11-10, and Legislative Rule Title 47 Series 26 and strengthen internal controls over WVNPDES Annual Permits by reconciling the permits issued with annual fee receipts and cash deposits.

Spending Unit's Response

DEP acknowledges inadequacies in the ERIS information system which produced this finding.

See pages 22-24.

Finding 2 Scope Limitation over Fund 3325 – Underground Storage Tank Administrative Fund

- We were unable to audit the \$65 portion of the \$90 Underground Storage Tank (UST) registration fees totaling approximately \$1,018,961 for Fund 3325, as well as, the associated Underground Storage Tank Groundwater Protection Fees totaling \$69,655 for fiscal years 2006 through 2008, due to the process to account for the fees had the following internal control weaknesses: (1) The agency was unable to provide a listing of all active UST's from July 1,2005 through June 30,2008; (2) The facility Identification numbering system used to account for each UST owner is not consecutive or logical; (3) DEP did not ensure that all active tank owners were in the billing system. We were unable to determine if all active tank owners were billed the UST registration fee; and (4) DEP did not reconcile the UST registration fees billed in ERIS to the UST registration fee revenues received. DEP did not reconcile the revenues received to the actual monies deposited into WVFIMS.

Auditors Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9 as amended and maintain adequate revenue records. We further recommend DEP implement effective procedures to overcome the internal control weaknesses listed above. Finally, we recommend DEP programmers find a way to make the ERIS system provide accurate reports of information pulled from the database.

Spending Unit's Response

DEP acknowledges inadequacies in the ERIS information system which produced this finding.

See pages 25-26.

Finding 3 Scope Limitation – Oil & Gas Well Groundwater Protection Fee

- We are unable to determine if all owners of oil & gas wells were billed and paid the Oil & Gas Well Groundwater Protection Fee due to the number of "active" oil & gas wells not being reasonable to the amounts billed. Collections totaled approximately \$884,000 for fiscal years 2006-2010.
- We are unable to determine if the billing and collections for the Oil & Gas Well Groundwater Protection Fee was reasonable or if every well owner with an "active" well was billed for the fee due to not having an accurate list of "active" wells at each billing date. We also noted unexplained differences averaging approximately 35% between the computerized billing reports.

Auditor's Recommendation

We recommend the DEP strengthen internal controls over Oil & Gas Well Groundwater Protection Fee Billings by maintaining an up to date list of "active" wells for each billing period and reconciling the list to the ERIS Invoice Report to ensure individuals were billed for all "active" wells.

Spending Unit's Response

DEP acknowledges inadequacies in the ERIS information system which produced this finding.

See pages 27-29.

Finding 4 Scope Limitation – Surface Mining Groundwater Fees

- We are unable to determine if the DEP assessed the Surface Mine Groundwater Protection Fee to all permit holders as of July 1 of each year and subsequently cannot determine if the DEP collected all of the monies due to them. Total collections for fiscal year 2006-2010 was approximately \$763,000

Auditor's Recommendation

We recommend the DEP implement an effective system of controls over Surface Mining Groundwater Fees by reconciling billings to number of permits in the permits database to ensure the ERIS Billing System is functioning properly and maintain adequate records to document such reconciliations. The Department of Environmental Protection should also document the proper accounting for these fees.

Spending Unit's Response

DEP acknowledges inadequacies in the ERIS information system which produced this finding.

See pages 30-31.

Finding 5 Scope Limitation – Coal Related Dam Certificates

- We were unable to audit \$74,800 of revenues for Coal Related Dams Control Permits during fiscal years 2006-2010 due to the fact DEP did not have the capability in ERIS to track the certificates issued. Certificates are not assigned a unique number when issued; instead certificates are assigned the mining permit number as the certificate number. DEP has the ability to track the number of dams in the state, however a dam may have multiple certificates and DEP is unable to provide us with the number of certifications issued, also monies for coal related dams are received in various regional offices in the state and are not recorded in ERIS.

Auditors Recommendation

We recommend that DEP comply with W. Va. Code §5A-8-9 by strengthening internal controls over Coal-Related Dam Control Permits, and by maintaining records of the number of certificates issued, such as implementing a unique numbering system for the Certificates. We also recommend that DEP strengthen internal controls over the monitoring of the annual fees, by implementing a monitoring policy.

Spending Unit's Response

DEP disagrees with this finding.

See pages 32-33.

See Auditor's Comments on Response on page 33.

Finding 6 Monies Deposited into Incorrect Fund

- During our attempted reconciliation of the ERIS Accounting Records to the WVFIMS Deposits we noted revenues related to various water and waste permits were deposited into funds which were not authorized to receive those types of revenues. The amounts deposited into an improper fund ranged anywhere from approximately \$1 to \$83,423 in a year, during fiscal years 2006-2010.

Auditor's Recommendation

We recommend the DEP deposit revenues only into the funds authorized to receive such revenues and the DEP strengthen internal controls over deposits by performing periodic reconciliations of the revenue recorded in ERIS with monies deposited into WVFIMS. Further we recommend the DEP perform revenue transfers to transfer monies collected for the various fee types to the appropriate funds.

Spending Unit's Response

DEP agrees with this finding.

See pages 34-36.

Finding 7 Permit Fees not Recorded in ERIS

- Permit fees collected in Regional office for NPDES Revenues are not recorded in ERIS. These fees totaled approximately \$2 million for Fiscal Years 2006-2010.
- Approximately \$34,828 in permit fees were recorded in ERIS during Fiscal Years 2006-2010 and due to a programming issue were not listed on the ERIS Revenue Report.
- Monies received from other DEP funds or other State Agencies for payment of a permit fee, were not recorded in ERIS. These monies totaled approximately \$23,000.
- We were unable to trace approximately \$10,000 of fees deposited in WVFIMS to the ERIS Accounting Records.

Auditor's Recommendation

We recommend DEP strengthen internal controls over deposits by performing periodic reconciliations of the ERIS Accounting records with monies deposited into WVFIMS and by accounting for all money received.

Spending Unit's Response

DEP agrees with this finding.

See pages 37-39.

Finding 8 Solid Waste Assessment Fees were not Transferred into the Solid Waste Management Board Reserve Fund

- DEP has not transferred the Solid Waste Assessment fees to the Solid Waste Management Board Reserve Fund in accordance with W. Va. Code §22-15-11(h) during our audit period. This transfer amount is based upon DEP receiving a report of adequacy of the Solid Waste Management Board

Reserve Fund from the water development authority, and can range from \$50,000 to \$500,000 per fiscal year.

Auditor's Recommendation

We recommend that DEP comply with W. Va. Code §12-15-11(h) and transfer Solid Waste Assessments Fees to the Solid Waste Management Board Reserve Fund annually.

Spending Unit's Response

DEP agrees that the statute is awkwardly drafted.

See pages 40-42.

Finding 9 Appropriating Unauthorized Monies

- During our audit of the Stream Partners Program, we noted that the DEP spent approximately \$110,000 from funds that were not appropriated by the Budget Bills for fiscal years 2008-2010.

Auditor's Recommendation

We recommend that the DEP comply with W. Va. Code §20-13-3 & §22-1-14, and the appropriate Budget Bills.

Spending Unit's Response

DEP disagrees with the finding.

See pages 43-44.

Finding 10 Lack of Monitoring over Solid Waste Assessment Fee Transfers

- We noted that the DEP does not perform any reconciliation or other types of monitoring over the allocation of the Solid Waste Assessment Fees by the Tax Department to the various DEP Funds, as a result, the assessment fees were misallocated to the various individual funds.

Auditor's Recommendation

We recommend that DEP comply with W. Va. Code §22-15-11, §22-15A-19, §22-16-4, §22C-4-30 and allocate Solid Waste Assessment Fees in the proper amounts to the proper funds. We further recommend that DEP develop internal controls to reconcile Solid Waste Assessment Fee deposits to Tax Department Monthly Tonnage Reports and keep an electronic copy of all Monthly Solid Waste Tonnage Reports received from the West Virginia State Tax Department as part of their backup documentation for each deposit.

Spending Unit's Response

DEP disagrees with the finding.

See pages 45-47.

Finding 11 DEP Exceeded Administrative Expense Allowance for Fund 3328

- The DEP exceeded their administrative expense allowance of 2% of deposits for the Landfill Closure Cost Assistance Program. Administrative expenses were approximately \$265,000 or 4%.

Auditor's Recommendation

We recommend the DEP seek Legislative approval to amend W. Va. Code §22-16-12 to increase the allowance for administrative expenditures.

Spending Unit's Response

DEP agrees with the finding.

See page 48.

Finding 12 Loan Repayments Deposited into Improper Fund

- We noted the DEP entered into a one million dollar loan agreement with the Tucker County Solid Waste Authority. Monies were given to Tucker County from Fund 3332 and were later repaid and deposited into Fund 3333.

Auditor's Recommendation

We recommend that the DEP comply with the Budget Bill and deposit monies into the correct fund.

Spending Unit's Response

DEP agrees with this finding.

See pages 49-50.

Finding 13 Misclassified Revenues/Reimbursements

- During our reconciliation of Fund 3327, we noted DEP misclassified NPDES Revenues totaling approximately \$20.7 million.
- During our audit of the Dams Annual Certification Fees, we noted DEP deposited fees totaling \$138,288 to multiple incorrect revenue source codes.
- During our audit of revenue from Gifts & Donations, we noted approximately \$20,000 of reimbursements for Contractual and Professional expenditures were misclassified as Gifts and Donations.
- We noted one instance during our reconciliation of Deposit Logs to WVFIMS where DEP misclassified travel as vehicle rental.

Auditor's Recommendation

We recommend that the DEP comply with the West Virginia Expenditure Schedule.

Spending Unit's Response

DEP agrees with the finding.

See pages 51-53.

Finding 14 Disbursing restricted Groundwater Protection Fees as unrestricted monies to contracted county health departments

- DEP paid contracted county health departments, participating in the Sewage System Registration Fee Sharing Program, approximately \$190,160 during Fiscal Years 2006-2009. Neither the initial nor the renewal contract **requires** the monies provided to be restricted for use of supporting the collection of septic tank registration fees and gathering data on the installations. Also, the DEP provides a fact sheet which states "there are no restrictions in place on the county health department as to their use of the fees". W. Va. Code §22-12-9 restricts how monies from the Groundwater Protection Fee Fund may be spent.

Auditor's Recommendation

We recommend the DEP comply with W. Va. Code §22-12-9, as amended, and (1) Restrict all Groundwater Protection Fee expenditures to those incurred to administer the Groundwater Protection Act; (2) Revise their Sewage System Registration Fee Sharing Program Fact Sheet and include a statement that these monies are in fact Groundwater Protection Fees and are restricted in nature to the purposes listed in the aforementioned code section; (3) Amend the contract to reflect that monies are restricted for Groundwater Protection Purposes; (4) Notify all contracted counties of this restriction, and (5) Establish policies and procedures over expenditures made to contracted county health departments, including how DEP will monitor and ensure that monies are only being used for Groundwater Protection Act purposes.

Spending Unit's Response

DEP disagrees with this finding.

See pages 54-55.

Finding 15 No Service/Collections of Septic Tank Registration Seal Fees

- During our audit of Septic Tank Registration Seals, we noted \$77,469 or 2,245 septic tanks were uncollected or had a credit balance as of June 30, 2010. DEP does not pursue collections for persons who do not pay the \$30 Groundwater Protection Fee and register septic tanks.

Auditor's Recommendation

We recommend DEP establish policies and procedures over monitoring and enforcement of septic tank registration seals and begin to pursue collections for persons who have obtained septic tank installation permits from county health departments and have not registered their tanks with DEP.

Spending Unit's Response

DEP disagrees with this finding.

See pages 56-57.

Finding 16 **Noncompliance with Legislative Rule Title 47 Series 55 Groundwater Protection Act Fee Schedule**

- We noted that the DEP is not issuing septic tank registration seals prior to tank installation. The DEP is issuing the seals after the county health department permit is obtained to install the tank.

Auditor's Recommendation

We recommend the DEP comply with Legislative Rule Title 47, Series 55 and require that all septic tanks be registered and issued a seal prior to installing the tank in the ground. If this is not possible, we recommend that DEP amend the aforementioned Legislative Rule.

Spending Unit's Response

DEP agrees with the finding.

See pages 58-59.

Finding 17 **Lack of Internal Controls over Agriculture Groundwater Protection Fees**

- We noted various weaknesses in the monitoring and enforcement of fees during our documentation of procedures and internal controls over the billing and collection of Agriculture Groundwater Protection Fees: (1) The Department of Agriculture (AG) is not providing the DEP with a list of the previous state fiscal year activities by October 1 as required by the Agreement between the DEP and the AG; (2) DEP does not pursue collections over unpaid invoices. As of June 30, 2010 unpaid registration fees totaled \$48,030; and (3) we noted that DEP issued a West Virginia National Pollution Discharge Elimination System permit to a facility which did not pay the pesticide groundwater fees.

Auditor's Recommendation

We recommend that DEP amend the Agreement between the DEP and AG and strengthen internal controls over the groundwater fees such as, formulating procedures or policies over the collection, monitoring, and assessment of penalties for any unpaid billings. We also recommend that DEP inform AG of any facilities which have not paid the required groundwater fees. We further recommend the DEP either apply the credit balances to a future invoice or refund the monies to the responsible parties. Lastly we recommend the DEP strengthen internal controls to ensure any permits issued have paid the required groundwater fees.

Spending Unit's Response

DEP agrees with this finding.

See pages 60-62.

Finding 18 **Interest and Late Fee Penalties not Assessed**

- During our audit of the Hazardous Waste Emergency Response Fund, we noted 19 invoices, totaling approximately \$130,000 were received after the 168 day grace period allowed by the Code of State Rules. DEP did not charge any of these companies for interest and/or surcharges for invoices paid after the 168 day grace period. The interest and late fee penalties if charged would have totaled approximately \$14,600.

Auditor's Recommendation

We recommend that the DEP comply with W. Va. Code §22-19-4 and charge interest and late fee penalties for past due invoices.

Spending Unit's Response

DEP agrees with this finding.

See pages 63-64.

Finding 19 Overstated Workers Compensation Premiums

- During our audit of Workers Compensation, we noted the DEP paid BrickStreet approximately \$11,745 in excess premiums during fiscal year 2009 due to employees being misclassified. We also noted, contrary to DEP's belief, payments for Donated Leave do not appear to be excluded from the Workers Compensation Reportable Wages.

Auditor's Recommendation

We recommend the DEP work with BrickStreet and the Insurance Commission and review all employees' worker's compensation classifications.

Spending Unit's Response

DEP disagrees with this finding.

See pages 65-68.

Finding 20 Solid Waste Groundwater Protection Fee Non-compliance

- We noted that the DEP is in noncompliance with the Solid Waste Groundwater Protection Fee Procedures. According to Legislative Rule 47-55, this fee should be assessed and collected by the Tax Department. However, DEP is assessing and collecting this fee.
- The DEP does not attempt to collect unpaid invoices and they do not inform the Tax Department of any unpaid groundwater fees. We also noted the DEP does not bill all operators for the fees.

Auditor's Recommendation

We recommend the DEP comply with W. Va. Code §22-15-11 by having the billings and collections performed by the Tax Department instead of DEP directly including all fees regardless of the amount. Alternatively, DEP could seek Legislative approval to amend the Groundwater Protection Fee Schedule.

Spending Unit's Response

DEP disagrees with this finding.

See pages 69-72.

Finding 21 **Incorrect Reimbursements/Disbursements for Septic Tank Registration Fee Sharing Program**

- During our audit of the Septic Tank Registration Seals, we noted DEP did not disburse either the contract seed monies or the annual reimbursements to the contract counties based on the number of seals issued the prior calendar year.

Auditor's Recommendation

- **We recommend that DEP fully comply with their agreement with the county health departments by reimbursing Contract Counties for 50% of the fees received. We recommend DEP comply with their Sewage System Registration Fee Sharing Program Information sheet, by providing counties with initial funding equal to the number of permits issued the preceding calendar year times the registration fee or by revising their written policies over the initial funding for health departments. We also recommend the DEP strengthen internal controls over septic tank reimbursements to ensure contract counties are receiving the proper amounts due for septic tank seal reimbursements by having written procedures for how calculations are to be performed.**

Spending Unit's Response

DEP disagrees with this finding.

See pages 73-75.

Finding 22 **Noncompliance with Dam Safety Rule over collections of fees**

- DEP does not attempt to collect unpaid invoices. As of June 30, 2010 there were 30 invoices, totaling \$4,025, uncollected. DEP waived five invoices, totaling \$2,100, for restricted certificates and had no fees due. We were unable to locate where either the code or Legislative rule gives DEP the authority to waive either annual or application fees. Seven of the uncollected invoices had credit balances. Certificate holders are not billed until credit balances are exhausted. Nine invoices were outstanding for a period of 11 to 1,800 days.

Auditor's Recommendation

We recommend that DEP comply with Legislative Rule Title 47 Series 34 by collecting all Dam Certificate Application and Annual Registration Fees. We also recommend the DEP does not waive any application or annual fees unless allowed by state laws. Alternately, the DEP could recommend the Legislature amend the law.

Spending Unit's Response

DEP disagrees with this finding.

See pages 76-77.

Finding 23 **Report Forms were not Provided or Completed**

- During our audit of the Stream Partners Program, we noted approximately 26% of the grants reviewed had either missing or unsigned mid-term or final reports. We reviewed 25 of the 86 grants awarded during fiscal years 2006-2010.

Auditor's Recommendation

We recommend that the West Virginia Department of Environmental Protection enforce and comply with Legislative Rule Title 60 Series 4 and the Stream Partners Grant Policy and Procedures.

Spending Unit's Response

DEP agrees with the finding and has put procedures and forms in place to address this issue.

See pages 78-79.

Finding 24 Leave Used/Accrued and not Deducted from/added to Leave Balances

- During our audit of the Leave Transactions Test, we noted two instances where DEP did not deduct leave, one instance where DEP did not record the accrual of eight hours for an employee, one employee who had an unapproved accrual, and one employee who had an unapproved deduction of leave. In addition, there were no timesheets for one employee for the months of February through April 2010.

Auditor's Recommendation

We recommend that all employee leave be entered into the system and verified against timesheets at the end of the month. We recommend the DEP comply with W. Va. Code §5A-8-9 and §12-3-13 and maintain adequate documentation to support payroll transactions.

Spending Unit's Response

DEP agrees with the finding.

See pages 80-81.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007

INTRODUCTION

POST AUDIT AUTHORITY

This is the report on the post audit of the West Virginia Department of Environmental Protection (DEP) Division of Water and Waste Management (DWWM) for the audit period of July 1, 2005 – June 30, 2007. Previously three reports have been issued for the Division of Water and Waste Management (DWWM): 1) Legislative Rules Not Promulgated for Cost Recoveries (June 2008); 2) Performance Bond Fund, Equipment Purchases and Cash Collections, DWWM Notice of Violations (May 2009); and 3) West Virginia Department of Environmental Protection Division of Water and Waste Management (May 2010). Any deviations from the audit period can be found in the Audit Scope Section. The audit was conducted pursuant to Chapter 4, Article 2 of the West Virginia Code, which requires the Legislative Auditor to “make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units.”

BACKGROUND

The Division of Water and Waste Management was created in 2003 from The Office of Waste Management and the Division of Water Resources. In 2005 The Office of Environmental Enforcement was added to the Division of Water and Waste Management, along with the Waste Compliance Unit and Dam Safety Unit. The Division is organized into six operational units: Environmental Enforcement, Nonpoint Source, Permitting, State Revolving Fund, Water Quality Standards and Watershed Assessment. The purpose of the Division is to preserve and enhance West Virginia's watersheds for the benefit and safety of all. The Division of Water and Waste Management strives to meet its mission through implementation of programs controlling surface and groundwater pollution caused by industrial and municipal discharges as well as oversight of construction, operation and closure of hazardous and solid waste and underground storage tank sites. In addition, the Division works to protect, restore, and enhance West Virginia's watersheds through comprehensive watershed assessments, groundwater monitoring, wetlands preservation, inspection and enforcement of hazardous and solid waste disposal and proper operation of underground storage tanks. The Division has four regional offices throughout the state located in: Logan, Oak Hill, Philippi, and Welch.

The West Virginia Department of Environmental Protection – Division of Water and Waste Management is currently located in Charleston, West Virginia, in Kanawha County. A listing of key DEP personnel is on the following page.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007**

SPENDING UNIT CONTACTS

**West Virginia Department of Environmental Protection –
Division of Water and Waste Management**

Randy C. Huffman Cabinet Secretary (May 2008 – Present)
Deputy Cabinet Secretary and Director, Division of Mining & Reclamation (April 2005 – April 2008)

Stephanie R. Timmermeyer..... Cabinet Secretary (March 2003 – April 2008)

Lisa A. McClung.....Deputy Cabinet Secretary (May 2008 – Present)
Director, Division of Water and Waste Management (March 2005 – May 2008)

Scott Mandirola Director, Division of Water and Waste Management (September 2008 – Present)

June Casto Chief, Office of Administration (April 2008 – Present)

B. F. Smith Chief, Office of Administration (December 2003 – April 2008)

Jean J. SheppardController (February 2010 – Present)

Ramona Dickson Controller (May 1998 - July 2009)

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007**

AUDIT SCOPE

We have audited the West Virginia Department of Environmental Protection - Division of Water and Waste Management for the period of July 1, 2005 through June 30, 2007. Our audit scope included a review of internal control and compliance with the laws, rules, and regulations applicable to (a) revenues in DWWM Funds 3023, 3206, 3218, 3220, 3325, 3327 (fiscal years 2006-2009 only), 3328, 3331, 3332, 3333, 3337, and 3340 during fiscal years 2006-2010, (b) investment earnings for DWWM Funds 3023, 3206, 3218, 3220, 3222, 3325, 3326, 3327, 3328, 3329, 3331, 3332, 3333, 3337, 3340, and 3342 for fiscal years 2006-2010; (c) leave expenditures (annual, sick, holiday, compensation time) for the period of July 1, 2005 – April 30, 2010 for employees paid from DWWM Funds including Funds 3329 & 3342; (d) transfers (Operating, Statutory, and Fund Transfers) made with DWWM Funds, except for Funds 3329 & 3342, during Fiscal Years 2006-2010; (e) Workers Compensation Premium payments for the agency as a whole during Fiscal Year 2009; and (f) expenditures for Contracts, Telecommunication, Unemployment, Vendors receiving over \$25,000, and employee benefits for the agency as a whole during Fiscal Years 2006-2009. The revenues and expenditures related to the various loan programs provided by the Clean Water State Revolving Fund (Funds 3329 & 3342) will be reported on separately at a later date. The audit was conducted in accordance with auditing standards generally accepted in the United States.

OBJECTIVES AND METHODOLOGIES

The objectives of our post audit were to audit the revenues and expenditures of the DWWM related to the following areas: (a) revenues in DWWM Funds 3023, 3206, 3218, 3220, 3325, 3327 (fiscal years 2006-2009 only), 3328, 3331, 3332, 3333, 3337, and 3340 during fiscal years 2006-2010, (b) investment earnings for DWWM Funds 3023, 3206, 3218, 3220, 3222, 3325, 3326, 3327, 3328, 3329, 3331, 3332, 3333, 3337, 3340, and 3342 for fiscal years 2006-2010; (c) leave expenditures (annual, sick, holiday, compensation time) for the period of July 1, 2005 – April 30, 2010 for employees paid from DWWM Funds including Funds 3329 & 3342; (d) transfers (Operating, Statutory, and Fund Transfers) made with DWWM Funds, except for Funds 3329 & 3342, during Fiscal Years 2006-2010; (e) Workers Compensation Premium payments for the agency as a whole during Fiscal Year 2009; and (f) expenditures for Contracts, Telecommunication, Unemployment, Vendors receiving over \$25,000, and employee benefits for the agency as a whole during Fiscal Years 2006-2009. The revenues and expenditures related to the various loan programs provided by the Clean Water State Revolving Fund (Funds 3329 & 3342) will be reported on separately at a later date. Additionally, we were to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, that we find, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units. We were to determine whether expenditure and revenue transactions were related to the spending unit's programs, were reasonable, and were recorded properly in the accounting systems. Additionally, we were to examine the spending unit's records and internal control over transactions and to evaluate its compliance with applicable State laws, rules and regulations.

In preparation for our testing, we studied legislation, applicable WV Code sections, applicable rules and regulations, and policies of the spending unit. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observations of the spending unit's operations, and through inspections of documents and records. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Additionally, we reviewed the budget, studied financial trends, and interviewed spending unit personnel to obtain an understanding of the programs and the internal controls. In planning and conducting our post audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk.

A variation of non-statistical and statistical sampling was used. Our samples of transactions were designed to provide conclusions about the validity of transactions, as well as internal control and compliance attributes. Some transactions for testing were selected using RAT-STAT statistical software and other transactions were selected for testing using professional judgment.

DEP's written response to the reportable compliance and other matters identified in our audit has not been subjected to the auditing procedures applied in the audit and, accordingly, we express no opinion on it.

DEP's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Post Audit Subcommittee in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

CONCLUSIONS

This report includes material findings regarding instances of noncompliance with applicable laws, rules or regulations. Other less significant findings that did not warrant inclusion in this report were communicated to DEP.

EXIT CONFERENCE

We discussed this report with management of the spending unit on June, 29, 2011. All findings and recommendations were reviewed and discussed. Management's response has been included at the end of each finding.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
JULY 1, 2005 – JUNE 30, 2007**

**SIGNIFICANT DEFICIENCIES AND REPORTABLE COMPLIANCE AND
OTHER MATTERS FINDINGS**

Informational Item 1 No Audit of the Environmental Resource Information System (ERIS) Database

Condition: During our Post Audit of the DEP-DWWM, we noted DEP relied heavily on the Environmental Resources Information System (ERIS) to track incoming revenues, billings, permitting, reclamation, and employee timekeeping & leave. ERIS was created as an information system only and was never meant to be an accounting system. However, DEP has adopted ERIS as the official accounting record. Throughout the audit we noted major problem areas within ERIS including, but not limited to:

1. The inability to generate accurate reports of information within the ERIS database,
2. The inability to reconcile the ERIS database to WVFIMS
3. The inability to generate proper year end uncollectible reports,
4. Limitations to the type of information that can be entered,
5. Limitations over pulling historical data from the ERIS database,
6. Controls that are in place, but do not work as described,
7. Inaccuracies found in the ERIS billing and fee calculations,
8. Double entries by ERIS, and
9. Additional deductions from employee leave balances for untaken leave.

Cause: The ERIS database was created in-house as an informational database and DEP did not consult with specialists, auditors, or accountants to determine the necessary types of information and controls that needed to be created for the ERIS database to be used as an accounting system. Additionally, the ERIS database has never been audited by an information technology auditor.

Effect: As a result of the weaknesses in the ERIS database, we were unable to audit five DWWM permit/groundwater fee types totaling approximately \$23,241,561.

Recommendation: We recommend DEP hire an outside auditor who specializes in information technology auditing and provide a copy of the final audit report and DEP's plan of corrective action to the Legislative Post Audit Division.

Spending Unit's Response: *The ERIS system was originally developed to consolidate regulatory information from the various agencies that were combined to form the Department of Environmental Protection (DEP). Since its inception its capabilities have been expanded to include producing invoices and capturing payment data related to this regulatory information. The payment data helps track outstanding invoices and client account*

information. DEP continues to work with the ERIS system to produce accurate outstanding invoice reports and client account information.

ERIS was never intended to be an accounting system and has not been adopted as DEP's official accounting record. WV FIMS is the State and DEP's official accounting system.

Finding 1**Scope Limitation - WVNPDES Permit Application, Annual Fees, and Groundwater Fees (Non Coal/Quarry)**

Condition:

1. We were unable to audit the West Virginia National Pollution Discharge Elimination System (WVNPDES) Permit fees and related Groundwater Protection Fees totaling approximately \$19,558,385 and \$872,263, respectively, for Fiscal Years 2006 through 2009 because the program records did not reconcile to WVFIMS.

The permit database consisted of 8,642 WVNPDES Permits. Some of those permits were issued during Fiscal Years 2009 & 2010 and thus would not have annual fees assessed on them. Of the 6,706 permits that should have paid annual fees, we were unable to trace 197 permits (or 2.94%) to a payment in ERIS. The following table shows the results of our review by Permit Type:

NPDES Permit Type	Total Permits	Permits - No Annual Fee Due	Total Permits to be Accounted For	Permits Traced to Revenue	Permits Unable to be Traced	% of Permits Unable to be Traced
Groundwater Remediation	29	3	26	25	1	3.85%
Hydrostatic Testing	126	47	79	67	12	15.19%
Water Treatment Plants	133	9	124	123	1	0.81%
Vehicle Washing Establishments	142	10	132	130	2	1.52%
Disposal of Sewage Sludge to POTW	51	11	40	32	8	20.00%
Land Application of Sewage Sludge	93	93	0	0	0	0.00%
Stormwater Discharge – Municipal Sewer System	41	1	40	0	40	100%
Stormwater Associated with Industrial	1022	61	961	952	9	0.94%
Stormwater Associated with Construction	5,260	1,490	3,770	3,656	114	3.02%
Sewage Less than 50,000 GDP	982	18	964	958	6	0.62%
Annual Industrial/Annual Municipal (Individual Permits)	587	17	570	566	4	0.70%
Division of Highways	125	125	0	0	0	0.00%
Stormwater Industrial (No Exposure)	<u>51</u>	<u>51</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>
Total	<u>8,642</u>	<u>1,936</u>	<u>6,706</u>	<u>6,509</u>	<u>197</u>	<u>2.94%</u>

We noted the DEP did not charge two of the above permit types annual fees: 1) Land Application of Sewage Sludge; and 2) Stormwater Discharge – Municipal Sewer System. We were unable to locate any exceptions in the law for these types of permits.

We were also, unable to trace 121 permit numbers, with related collections of approximately \$138,635 from the ERIS Revenue Report to the permit databases provided by DEP.

We provided DEP with the reconciliation and requested they provide us with explanations for the missing permits or fees. In addition we asked the DEP to provide

us with a reconciled permit database to the WVFIMS Cash. The DEP did provide us with a “corrected” database, however the same permit number was sometimes listed multiple times on the database and there were permit numbers with prefixes which were no longer in use, also there was no evidence of any reconciliation to either ERIS or to the WVFIMS Cash deposits.

2. We found DEP lacks sufficient monitoring over WVNPDES Facilities who have had their permit voided for non-payment of the annual fee. Each month, the program office prints out a void list for all WVNPDES Permit Facilities that have not paid their annual permit fee. The program office will investigate this listing to see if certain facilities need to be removed. After investigating the list, the program office sends the list of permits needing to be voided to the Accounting Department, which will generate a void letter. These letters are sent back to the Program Office to be signed by the Director of Water and then sent to the permit holders. A copy of the void letter is sent to the appropriate regional office. The regional offices keep the copy of the void letter in the permit file; however no inspections are performed, to ensure companies are not in operation.

Criteria:

W. Va. Code §22-11-10 states in part:

“d) . . . Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: Provided, That no person holding a permit for a home aerator of six hundred gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: Provided, however, That no annual permit fee may exceed five thousand dollars. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than ninety days past due pursuant to the rules promulgated under this section.”

Legislative Rule Title 47 Series 26 Water Pollution Control Permit Fee Schedules states in part:

“3.2. Assessment of Annual Permit Fees. Any person who holds a permit shall pay an annual permit fee in accordance with the provisions of section 7 of this rule.”

“3.5. Collection of Annual Permit Fees. The annual permit fee shall be submitted to the chief by no later than the anniversary of the date of permit issuance in each year of the term of the permit”

“3.5.a. **A permit will become void** if the annual permit fee has not been paid within ninety (90) days of the due date.”

“7. Annual Permit Fees. . . . 7.1. Facilities Discharging Sewage. . . 7.2. Facilities Discharging Industrial Wastes or Other Wastes . . . 7.3. Publicly-Owned Treatment Works (POTW) . . . 7.4. Closed System Facilities . . . 7.5. Solid Waste Facilities . . . 7.6. Facilities Discharging Stormwater. . . 7.7. Aquaculture facilities. . .”

Cause: DEP has not implemented an internal control system for reconciling monies located in ERIS to monies located in FIMS. Additionally no control has been implemented to reconcile permits in the WVNPDES database to fees located in ERIS. The Director of Water and Waste Management informed us Land Application of Sewage Sludge (WVSG1) are billed annually each year in April and is based on 47CSR26 (\$5 per ton). For the stormwater permits he informed us the facilities are not required to monitor flow. Since the annual fees are based on the amount of discharge, there's no method of assessing annual fees without the flow. For Disposal of Sewage Sludge to POTW (WVSG2), he said that the haulers do not discharge into state waters and that the fee rule 47CSR26 only pertains to discharges into state waters which is why an annual fee is not assessed.

Effect: By not reconciling the revenues received for annual permit fees with the number of issued permits and by not performing inspections of facilities which have not paid the annual fees, the DEP could be unaware of facilities which should have paid annual fees and/or may be operating without a valid permit. Because we were unable to reconcile the revenues received with the issued permits, we are unable to determine if the DEP received all of the monies for annual permit fees and were unable to audit the permit and groundwater fees, totaling approximately, \$19,558,385 and \$872,263, respectively, for fiscal years 2006-2009.

Recommendation: We recommend that the DEP comply with W. Va. Code §22-11-10, Legislative Rule Title 47 Series 26 and strengthen internal controls over WVNPDES Annual Permits by reconciling the permits issued with annual fee receipts and cash deposits.

Spending Unit's
Response:

DEP acknowledges inadequacies in the ERIS information system which produced this finding. DEP Technology staff is currently looking at off the shelf software to replace the ERIS system. In addition, the State is looking at ERP systems that may replace some of the functionality of the ERIS system. In the interim, DEP continues to work with the technology staff to produce reports that will help reconcile ERIS with the accounting records.

Finding 2

Scope Limitation over Fund 3325 – Underground Storage Tank Administrative Fund

Condition:

We were unable to audit the \$65 portion** of the \$90 Underground Storage Tank (UST) registration fees totaling approximately \$1,018,961 for Fund 3325 – The Underground Storage Tank Administrative Fund, as well as, the associated Underground Storage Tank Groundwater Protection Fees totaling approximately \$69,665 for fiscal years 2006 through 2008, because the process to account for the fees had the following internal control weaknesses:

1. The agency was unable to provide a listing of all active USTs for the audit period.

All UST information was kept in ERIS; however, the system could not pull the historical information needed to audit the registration fees.

2. The Facility Identification numbering system used to account for each UST owner is not consecutive or logical.

Upon review of the ERIS database, we noted 926 instances of gaps totaling 18,641 missing or skipped facility ID numbers. The largest gap had 9,800 numbers missing or skipped. Inspectors were given individual blocks of numbers to assign, but when an inspector leaves employment with DEP, the new inspector receives a new block of numbers rather than starting where the previous inspector left off.

3. DEP did not ensure that all active tank owners were in the billing system. Thus, we were unable to determine if all active tank owners were billed the UST registration fee.

We noted the agency entered the status/information of tank owners into ERIS only by receiving notification forms from the tank owners or the facilities. Prior to the billing of the annual registration fees, the agency did not ensure the database in ERIS included all active tanks in the entire state. Therefore, we believe the agency did not charge registration fees to all active tanks.

4. DEP did not reconcile the UST registration fees billed in ERIS to the UST registration fee revenues received. Also, DEP did not reconcile the revenues received to the actual monies deposited into WVFIMS.

Based on the documentation provided, the agency billed registration fees to two tank owners for four USTs which were not listed in the ERIS UST database provided to us. Discrepancies in the data that was in ERIS and the data that could be pulled from ERIS made it apparent that there are limitations to ERIS.

**The remaining \$25 portion of the UST Fee was deposited into a Division of Land Restoration (DLR) Fund, which was audited in a separate post audit and any noncompliance was included in the DLR audit report, released in Jan 2011.

Criteria: W. Va. Code §5A-8-9, as amended, states in part:

“(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities.”

W. Va. Code §22-17-6, as amended, states in part:

“(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows: . . .(1) A requirement for a yearly registration fee for underground storage tanks”

Cause: ERIS was created as an information system and does not have the capabilities to generate a list of all active tanks for a particular historical period.

According to the former Environmental Resources Program Manager, there are no Federal guidelines for facility identification numbering; however, the agency identifies the facilities/tank owners by numbers. The facility identification numbers are sequential, but the Environmental Resources Program Manager does not really know the reason for the gaps in facility ID numbers. Further, the Environmental Resources Program Manager stated, “Currently, the agency provides a two-digit county code based on the county the site is located in, and then uses the facility ID book and assigns the site the next five digit number in the sequence.”

Effect: As a result of 18,641 missing/skipped facility identification numbers and the inability of DEP to provide a list of all active tanks, DEP could not ensure that all active tanks were billed UST registration fees, and discrepancies in the records provided, we were unable to audit revenues in Funds 3325 and 3220 totaling approximately, \$1,018,961 and \$69,665, respectively, for fiscal years 2006 through 2008.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9 as amended and maintain adequate revenue records. We further recommend DEP implement effective procedures to overcome the internal control weaknesses listed above. Finally, we recommend DEP programmers find a way to make the ERIS system provide accurate reports of information pulled from the database.

Spending Unit’s Response: *DEP acknowledges inadequacies in the ERIS information system which produced this finding. DEP Technology staff is currently looking at off the shelf software to replace the ERIS system. In addition, the State is looking at ERP systems that may replace some of the functionality of the ERIS system. In the interim, the UST program’s ERIS Module is currently being rewritten and a newly developed UST invoice system is a part of the upgrade. The groundwater fee will be included on the UST/LUST invoicing once the new system is implemented. DEP also continues to work with the technology staff to produce reports that will help reconcile ERIS with the accounting records.*

Finding 3

Scope Limitation - Oil & Gas Well Groundwater Protection Fee

Condition:

We were unable to determine if all owners of oil & gas wells had been billed and paid the Oil & Gas Well Groundwater Protection Fee. The number of “active” Oil & Gas wells was not reasonable to the amounts billed for Fiscal Years 2006 - 2010. Without an accurate listing of “active” wells at each billing date, we were unable to determine if the billing and collections for the Oil & Gas Well Groundwater Protection Fee were reasonable or if every well owner with an “active” well was billed for the fee. The Office of Oil & Gas was unable to provide us with lists of all active Oil & Gas wells as of the Oil & Gas Well Groundwater Protection Fee billing date for the Fiscal Year 2006 through 2010, due to limitations in the database. However, the DEP Information Technology staff was able to provide us with the number of “active” wells for each billing date. We used those figures to determine if the amounts billed and collected for the groundwater fee were reasonable to the number of wells. The schedules below show the result based on the number of wells provided:

<u>Fiscal Year</u>	<u># of Wells</u>	<u>Audited Fees</u>	<u>Actual Billings</u>	<u>Billing Difference</u>	<u>% Billing Difference</u>	<u>Actual Collections</u>	<u>Collections Difference</u>	<u>% Collection Difference</u>
2006	47,941	\$143,823.00	\$ 193,284.00	\$ (49,461.00)	-34.39%	\$ 151,404.00	\$ (7,581.00)	-05.27%
2007	52,226	156,678.00	203,674.00	(46,996.00)	-30.00%	179,031.00	(22,353.00)	-14.27%
2008	54,233	162,699.00	212,706.00	(50,007.00)	-30.74%	188,439.00	(25,740.00)	-15.82%
2009	52,234	156,702.00	210,993.00	(54,291.00)	-34.65%	159,527.00	(2,825.00)	-01.80%
2010	57,822	<u>173,466.00</u>	<u>229,143.00</u>	<u>(55,677.00)</u>	-32.10%	<u>205,979.00</u>	<u>(32,513.00)</u>	-18.74%
Total		<u>\$793,368.00</u>	<u>\$1,049,800.00</u>	<u>\$(256,432.00)</u>	-32.32%	<u>\$ 884,380.00</u>	<u>\$(91,012.00)</u>	-11.47%

We were able to obtain a copy of the ERIS Invoice Report, which lists all individuals billed for the Oil & Gas Well Groundwater Protection Fee; the ERIS Revenue Report, which lists all collections on billings for the Oil & Gas Well Groundwater Protection Fee; and the ERIS Amounts Uncollected Report, a listing of any invoices which have been adjusted and/or unpaid during the period. We attempted to reconcile these computerized billing reports; however, every year had an average unexplained difference of approximately \$11,679, or 35%.

The unexplained differences noted were mainly due to Invoices with audited unpaid balances as of June 30th that we were unable to trace/locate on the ERIS Uncollected Report. We obtained a copy of the ERIS Uncollected Report, which lists all invoices adjusted off/unpaid as of June 30, 2010. There was approximately \$143,302 and \$22,654 in uncollected invoices and adjustments, respectively, as of June 30, 2010. Some of the unpaid invoices were from Fiscal Year 2000 billings and had been outstanding for at least 11 years.

Criteria:

W. Va. Code §5A-8-9, as amended, states in part:

“The head of each agency shall: . . .

“(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities.”

Legislative Rule Title 47 Series 55: Groundwater Protection Fee Schedule, states in part:

“3.3.a. Each agency's permit shall require that all groundwater protection fund fees be paid in accordance with subsection 3.5 of this rule. The permit shall also contain language stating that failure to remit groundwater protection fund fees shall result in withdrawal or denial of groundwater certification, and subject the person to the penalties outlined in W. Va. Code ' 22-12-10. . .”

“3.3.a.2. Prior to issuing a permit, each agency shall require that all groundwater protection fund fees be paid following the provisions set forth in subdivision 3.4.a of this rule. . .”

“3.5. Schedule of groundwater protection fund fees -- The annual groundwater protection fund fee for the following facilities or activities except subdivision 3.5.c of this rule which is a one time registration fee due prior to installation are: . . .”

“3.5.n. An oil well - \$3.00 per well.”

“3.5.o. A gas well - \$3.00 per well. . .”

Cause: According to the DEP Controller, the Oil & Gas Database “. . . is dynamic, so it won't give you the information you are requesting for previous dates. We do keep a history of the billing data, which is done on “active” wells, but it does not have api, operator or anything associated with a particular well. So that won't completely answer the request. We do have backups of our database from the past, but we're not sure how far back they go & if they will show the information you want. . .”

Effect: Without an accurate listing of “active” wells, we were unable to determine if everyone who should have been billed the Oil & Gas Well Groundwater Protection Fee was billed the fee. Also without effective reconciliation processes the DEP is unable to determine if the amounts billed and collected are properly accounted for.

Recommendation: We recommend the DEP strengthen internal controls over Oil & Gas Well Groundwater Protection Fee Billings by maintaining an up to date list of “active” wells for each billing period and reconciling the list to the ERIS Invoice Report to ensure individuals were billed for all “active” wells.

Spending Unit's

Response:

DEP acknowledges inadequacies in the ERIS information system which produced this finding. ERIS is a dynamic system and cannot produce historical reports. DEP Technology staff is currently looking at off the shelf software to replace the ERIS system. In addition, the State is looking at ERP systems that may replace some of the functionality of the ERIS system. In the interim, DEP continues to work with the technology staff to produce reports that will help reconcile ERIS with the accounting records.

Finding 4**Scope Limitation – Surface Mining Groundwater Fees**

Condition:

We are unable to determine if the Surface Mining – Coal and Surface Mining – Non Coal revenues totaling approximately \$717,829 and \$45,278, respectively, collected during Fiscal Years 2006 through 2010 were reasonable to the number of permits issued. We obtained a list of all surface mine permits issued as of July 1 of each fiscal year and attempted to reconcile the list to the amounts billed per the ERIS Accounting Records for Fiscal Years 2006 through 2010. We attempted to trace the amounts invoiced to a responsible party listed in the permit database. We were unable to trace billings totaling approximately \$24,000, or 3%, to a responsible party listed in the permit database.

We also attempted to determine the reasonableness of the billings traced to a responsible party listed on the permit database to audited billings based on the number of issued permits. The schedule below shows the results of the test.

<u>Fiscal Year</u>	<u>Traceable Billings</u>	<u>Number of Permits</u>	<u>Audited Billings</u>	<u>Difference</u>	<u>Percentage Difference</u>
2006	\$172,477.00	2,212	\$221,200.00	\$48,723.00	28.25%
2007	161,801.00	2,207	220,700.00	58,899.00	36.40%
2008	147,063.00	2,250	225,000.00	77,937.00	53.00%
2009	159,325.00	2,223	222,300.00	62,975.00	39.53%
2010	<u>163,438.00</u>	2,211	<u>221,100.00</u>	<u>57,662.00</u>	35.28%
Total	\$804,104.00	11,103	<u>\$1,110,300.00</u>	<u>\$342,734.00</u>	38.08%

Based on the results of the tests, we are unable to determine if the DEP assessed the Surface Mine Groundwater Protection Fee to all permit holders as of July 1 of each year and subsequently cannot determine if the DEP collected all of the monies due them. There are no reconciliations performed between the ERIS Surface Mine Coal and ERIS Surface Mine Non-Coal Groundwater Protection Fees and the number of permits issued as of July 1. We also noted immaterial differences during our reconciliation of the ERIS Accounting Records, due to different amount being recorded as received on the ERIS Revenue Report and ERIS Uncollected Report.

Criteria:

Legislative Rule Title 47 Series 55 Groundwater Protection Fee Schedule states in part:

“3.5.h. A facility which may impart groundwater quality, as determined by the director of the division of environmental protection, which is required to obtain a permit under W. Va. Code §22-3-1 et seq., or W. Va. §22-11-8(b)(6), or W. Va. Code §22-4 et seq. - \$100.00.”

Cause:

No reconciliations for number of permits to billing fees are currently being performed or documented.

Effect:

Without effective reconciliation processes the DEP is unable to determine if the amounts billed and collected are properly accounted for.

Recommendation: We recommend the DEP implement an effective system of controls over Surface Mining Groundwater Fees by reconciling billings to number of permits in the permits database to ensure the ERIS Billing System is functioning properly and maintain adequate records to document such reconciliations. The DEP should also document the proper accounting for these fees.

Spending Unit's
Response:

DEP acknowledges inadequacies in the ERIS information system which produced this finding. ERIS is a dynamic system and cannot produce historical reports. DEP Technology staff is currently looking at off the shelf software to replace the ERIS system. In addition, the State is looking at ERP systems that may replace some of the functionality of the ERIS system. In the interim, DEP continues to work with the technology staff to produce reports that will help reconcile ERIS with the accounting records.

Finding 5

Scope Limitation – Coal Related Dam Certificates

Condition:

We are unable to audit revenues totaling \$74,800 for Fiscal Years 2006 through 2010 for the application and issuance of Coal Related Dam Control Certificates because: (1) the DEP does not have the capability in ERIS to track the certificates issued; (2) Certificates are not assigned a unique number when issued; instead the certificates are assigned the mining permit number as the certificate number; (3) while DEP does have the ability to track the number of dams in the state, a dam may have multiple certificates due to multiple embankments, modifications/expansions, or abandonments; and (4) the DEP is unable to provide us with the number of certificates issued. Unlike the Non-Coal Dams, the monies for Coal Related Dams are received in the various regional offices and are not recorded in ERIS.

The majority of coal-related Dam Certificates are issued to Type C dams. This class is required to submit the annual registration fee with the annual Warning plans. The DEP does not have a system of internal controls in place to determine if the Type A & B dams and certificates for dams which have not yet been constructed, have submitted the required annual registration fee, because these types of dams are not required by law to submit the Warning Plans. The only control DEP has is an inspector may remind the certificate holder the fee needs to be paid when an inspection is being performed.

Criteria:

W.Va. Code §5A-8-9 states in part:

“...The head of each agency shall: ...

“... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities....”

Cause:

According to the Engineer Senior, “We don’t bill certificate holders for the annual fee . . . DEP does not have a method for monitoring that all certificate holders have submitted the annual fees, other than an inspector may remind the certificate holder the fee needs to be paid when an inspection is being performed.”

Effect:

As a result of being unable to account for each coal related dam, we are unable to audit the revenues \$74,800 associated with the certificate fees.

Recommendation:

We recommend that DEP comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code by strengthening internal controls over Coal-Related Dam Control Permits, by maintaining records of the number of certificates issued, such as implementing a unique numbering system for the Certificates. We also recommend that DEP strengthen internal controls over the monitoring of the annual fees, by implementing a monitoring policy.

Spending Unit’s

Response: *DEP disagrees with this finding. The assigned mine permit numbers are unique and are tracked in ERIS and a listing of all dams/certificates can be produced.*

Auditor's Comments

on Response:

We received a listing of Dam Applications for the period of July 1, 2005 – June 30, 2010. There were surface mine permit numbers which were listed multiple times due to the dam having multiple embankments; each embankment required its own certificate. DEP also provided us a list of all Dams in the State as of June 30, 2010. We traced a surface mine permit which was listed 5 times on the application file (all were issued the same day) to the List of all Dams in the State as June 30, 2010. The surface mine permit number was only listed twice on the List of all Dams in the State. We also spoke with an employee in the Program Office who informed us ERIS did not have the capability to track Coal Related Dam Certificates because the certificates are not assigned unique numbers when issued and that a facility (dam) may have multiple certificates due to multiple embankments/expansions or abandonment.

Finding 6

Monies Deposited into Incorrect Fund

Condition:

During our attempted reconciliation of the ERIS Accounting Records to the WVFIMS Deposits we noted the following revenues related to various water permits were deposited into funds which were not authorized to receive those types of revenues. The schedule below shows the amount of monies per fiscal year by fund which were incorrectly deposited and need to be corrected. Positive amounts are revenues which need to be transferred to the fund from other funds, and negative amounts are revenues which need to be transferred out of the fund into other funds. Amounts are rounded to the nearest \$1.

<u>Fiscal Year</u>	<u>Fund 3023</u>	<u>Fund 3206</u>	<u>Fund 3217</u>	<u>Fund 3220</u>	<u>Fund 3325</u>	<u>Fund 3326</u>	<u>Fund 3327</u>	<u>Fund 3331</u>
2006	\$ -	\$ (3,035)	\$ -	\$ (33,091)	\$ -	\$ (91)	\$ 42,286	\$ (6,069)
2007	48	-	-	(1,642)	-	-	1,594	-
2008	84	200	(42)	30	633	-	(230)	(675)
2009	58	-	1	19,468	(24)	-	(19,478)	(25)
2010	-	(100)	-	83,423	-	-	(83,323)	-
Totals	\$ 190	\$ (2,935)	\$ (41)	\$ 68,189	\$ 609	\$ (91)	\$ (59,152)	\$ (6,769)

Criteria:

W. Va. Code §22-11-10, as amended, states in part:

“(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the **Water Quality Management Fund**. . .” **(Emphasis Added)**

W. Va. Code §22-12-9, as amended, states in part:

“. . .(a) The Director of the Division of Environmental Protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a [29A-1-1 et seq.] of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. . . Such fees in the aggregate shall not exceed one million dollars per year and shall be deposited into the **Groundwater Protection Fund** established pursuant to this article. . .(b). . .a schedule of groundwater remediation fees which in the aggregate shall not exceed two hundred fifty thousand dollars. Such groundwater remediation fees shall be assessed over a time period not to exceed two years from effective date of such rules and shall be deposited into the **Groundwater Remediation Fund** established pursuant this article. . .” **(Emphasis Added)**

W. Va. Code §22-14-18, as amended, states in part:

“. . . (a) The special fund designated **The Dam Safety Fund** hereinafter referred to as the fund shall be continued. . .(b) All certificate application fees and annual registration fee assessments, any interest or surcharge assessed and collected by the department, interest accruing on investments and deposits of the fund, and any

other moneys designated by the department shall be paid into the fund. . .”
(Emphasis Added)

W. Va. Code §22-15-11, as amended, states in part:

“ . . . The director shall allocate twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the **Solid Waste Reclamation and Environmental Response Fund** to be expended for the purposes hereinafter specified. . .” **(Emphasis Added)**

W. Va. Code §22-17-20, as amended, states in part:

“The registration fee collected under this section shall not exceed sixty-five dollars per tank per year. All such registration fees and the net proceeds of all fines, penalties and forfeitures collected under this article including accrued interest shall be paid into the State Treasury into a special revenue fund designated the **Underground Storage Tank Administrative Fund**. . .” **(Emphasis Added)**

W. Va. Code §22-17-21, as amended, states in part:

“The fees assessed pursuant to this section shall not exceed twenty-five dollars per tank per year. The proceeds of such assessment shall be paid into the state treasury into a special fund designated the **Leaking Underground Storage Tank Response Fund**, which is hereby continued.” **(Emphasis Added)**

W. Va. Code §22-18-22, as amended, states in part:

“...All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated the **Hazardous Waste Management Fund**...There is imposed an annual certification fee for facilities that manage hazardous waste. . .The revenues collected from the annual certification fee shall be deposited in the State Treasury to the credit of the **Hazardous Waste Management Fee Fund**...” **(Emphasis Added)**

W. Va. Code §22-19-3, as amended, states in part:

“(a) The special fund designated **The Hazardous Waste Emergency Response Fund**, hereinafter referred to as the fund, shall be continued in the State Treasury. (b) All generator fee assessments, any interest or surcharge assessed and collected by the director, interest accruing on investments and deposits of the fund, and any other moneys designated shall be paid into the fund. . .” **(Emphasis Added)**

Cause:

The DEP does not perform reconciliations between the ERIS Revenue and the WVFIMS Deposits. The DEP agrees the monies were not deposited into the proper funds. They agree that all of the monies except for \$50 in Fiscal Year 2009 were not deposited into the correct fund.

Effect: By not having a reconciliation process in place to reconcile the ERIS records with the WVFIMS deposits, the DEP is unaware of any potential misstatements resulting from monies being deposited into an incorrect fund or of monies which were recorded in ERIS but not deposited into WVFIMS or vice versa. Also by not having some record of monies received, other than WVFIMS, for the regional offices, there is an increased risk monies could become misappropriated or lost.

Recommendation: We recommend the DEP deposit revenues only into the funds authorized to receive such revenues and the DEP strengthen internal controls over deposits by performing periodic reconciliations of the revenue recorded in ERIS with monies deposited into WVFIMS. Further we recommend the DEP perform revenue transfers to transfer monies collected for the various fee types to the appropriate funds.

Spending Unit's Response: *DEP agrees with the finding. DEP is in the process of implementing a reconciliation process to ensure mistakes are caught and corrected in a timely manner.*

Finding 7

Permit Fees not Recorded in ERIS

Condition:

1. Permit fees related to NPDES Revenues totaling approximately \$2,094,748 for fiscal years 2006 through 2009 which were collected in the Regional Offices did not appear on the ERIS Revenue Report. Collections in the Regional Offices average approximately \$500,000 per year.

2. We noted approximately \$34,829 was recorded in ERIS during Fiscal Year 2006 - 2010 for payment of permit fees. However, due to an ERIS programming issue, the receipts did not appear on the ERIS Revenue report. The system was unable to determine where these payments should go.

<u>Fund</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>Total</u>
3023	\$ 0.00	\$ 0.00	\$ 0.00	\$ 29.00	\$ 0.00	\$ 29.00
3220	2,194.00	1,269.00	1,371.00	1,707.00	3,573.00	\$10,114.00
3327	<u>2,179.00</u>	<u>7,759.00</u>	<u>6,343.00</u>	<u>8,405.00</u>	<u>0.00</u>	<u>\$24,686.00</u>
Total	<u>\$4,373.00</u>	<u>\$9,028.00</u>	<u>\$7,714.00</u>	<u>\$10,141.00</u>	<u>\$3,573.00</u>	<u>\$34,829.00</u>

3. DEP transferred approximately \$2,658 from other DEP funds to pay for water permits and annual fees in Fiscal Year 2006 through 2008, which were not recorded in ERIS. In addition, DEP received payments from Other State Agencies totaling approximately \$1,248 to pay for water permits and annual fees in Fiscal Year 2006, 2007, 2009 and 2010. These payments were not recorded in ERIS. Finally, payments wired directly to the State Treasurer’s Office in Fiscal Year 2008 and 2009, totaling approximately \$19,110, were also not recorded in ERIS.

4. We were unable to trace approximately \$12,000 of permit fees deposited into WVFIMS during Fiscal Year 2006-2010 to a record in ERIS.

<u>Fund</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>Totals</u>
3206	\$600.00	\$ 0.00	\$ 0.00	\$0.00	\$ 0.00	\$ 600.00
3220	0.00	275.00	28.00	3.00	30.00	336.00
3327	0.00	9,350.00	0.00	0.00	0.00	9,350.00
3331	<u>51.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>\$ 51.00</u>
Totals	<u>\$651.00</u>	<u>\$9,625.00</u>	<u>\$28.00</u>	<u>\$3.00</u>	<u>\$30.00</u>	<u>\$10,337.00</u>

Criteria:

W. Va. Code §22-14-18, as amended, states in part:

“ . . . (a) The special fund designated The Dam Safety Fund hereinafter referred to as the fund shall be continued. . . (b) All certificate application fees and annual registration fee assessments, any interest or surcharge assessed and collected by the department, interest accruing on investments and deposits of the fund, and any other moneys designated by the department shall be paid into the fund. Accrual of funds shall not exceed three hundred thousand dollars per year, exclusive of application fees. The department shall expend the proceeds of the fund for the review of applications, inspection of dams, payment of costs of remedial emergency actions and enforcement of the provisions of this article.”

W. Va. Code §22-12-9, as amended, states in part:

“ . . . **(a)** The Director of the Division of Environmental Protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a [29A-1-1 et seq.] of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. . . Such fees in the aggregate shall not exceed one million dollars per year and shall be deposited into the Groundwater Protection Fund established pursuant to this article. . .”

W. Va. Code §22-11-10, as amended, states in part:

“**(a)** The special revenue fund designated the Water Quality Management Fund established in the State Treasury on the first day of July, one thousand nine hundred eighty-nine is hereby continued. **(b)** The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. . .”

W. Va. Code §22-19-3, as amended, states in part:

“(a) The special fund designated The Hazardous Waste Emergency Response Fund, hereinafter referred to as the fund, shall be continued in the State Treasury. (b) All generator fee assessments, any interest or surcharge assessed and collected by the director, interest accruing on investments and deposits of the fund, and any other moneys designated shall be paid into the fund. . .”

Cause:

1. According to the Accounts Receivable Manager, “the regional offices do enter information into ERIS such as when the payment was received, how much, & who submitted, however, this is not captured in an ERIS Revenue Report. I’m not aware of invoices being created, or payments applied to a customer account such as with Water.”
2. According to the Accounts Receivable Manager these amounts were entered into ERIS, however due to a programming error they do not show on the ERIS Revenue Report.
3. We were unable to determine the cause.
4. According to the Account Receivable Manager some of the reasons for the amounts not being recorded were: dates were incorrect in ERIS, invoices were recorded in ERIS but were not listed on the ERIS Report, and some payments were not entered in ERIS. According to the Account Receivable Manager these fees were for Oil & Gas and Mining & Reclamation related items and were not recorded in ERIS.

Effect:

By not having a reconciliation process in place to reconcile the ERIS records with the WVFIMS deposits, the DEP is unaware of any potential misstatements resulting from monies which were recorded in ERIS but not deposited into WVFIMS or vice versa.

Recommendation: We recommend DEP strengthen internal controls over deposits by performing periodic reconciliations of the ERIS Accounting records with monies deposited into WVFIMS and by accounting for all money received.

Spending Unit's

Response: *DEP agrees with the finding. DEP is in the process of implementing a reconciliation process to ensure mistakes are caught and corrected in a timely manner.*

Finding 8 Solid Waste Assessment Fees were not Transferred into the Solid Waste Management Board Reserve Fund

Condition: DEP has not transferred Solid Waste Assessment fees to the Solid Waste Management Board Reserve Fund (Fund 3333) in accordance with W. Va. Code §22-15-11(h) during our audit period. The transfer amount is based upon DEP receiving a report of adequacy of the Solid Waste Management Board Reserve Fund from the Water Development Authority, and can range from \$50,000 to \$500,000 per fiscal year. As of June 30, 2010 there was approximately \$6 million in Fund 3333.

Criteria: W. Va. Code §22-15-11(h), as amended, states in part:

“...Dedication of proceeds. -- The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited at least monthly in an account designated by the director. The director shall allocate twenty-five cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the "Solid Waste Reclamation and Environmental Response Fund" to be expended for the purposes hereinafter specified. The first one million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the "Solid Waste Enforcement Fund" and expended for the purposes hereinafter specified. **The next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the "Solid Waste Management Board Reserve Fund"**, and expended for the purposes hereinafter specified: **Provided**, That in any year in which the **water development authority determines that the solid waste management board reserve fund is adequate** to defer any contingent liability of the fund, the **water development authority shall so certify** to the director and the director shall then cause **no less than fifty thousand dollars nor more than two hundred fifty thousand dollars** to be deposited to the fund: **Provided**, however, That in any year in which the **water development authority determines that the solid waste management board reserve fund is inadequate** to defer any contingent liability of the fund, the **water development authority shall so certify** to the director and the director shall then cause **not less than two hundred fifty thousand dollars nor more than five hundred thousand dollars** to be deposited in the fund..." **(Emphasis Added)**

A legal opinion from Legislative Services states in part:

“ . . . reviewed §22-15-11 (h) and our interpretation of this provision is that it mandates that the next \$250,000 of the net proceeds of fee -after the other prioritized obligations in subsection (h) are met -be deposited in the Solid Waste Management Board Reserve Fund, unless: -the Water Development Authority makes a determination regarding the status of the fund and certifies to the DEP Director that the fund is adequate to defer any contingent liability of the fund, in which case the director shall cause an amount between \$50,000 and \$250,000 to be deposited in the 'fund, or unless -the Water Development Authority certifies to the DEP Director that the fund is adequate to defer any contingent liability of the fund, in

which case the director shall cause an amount between \$250,000 and \$500,000 to be deposited in the fund.

While the statute is awkwardly drafted, we are of the opinion that the clause providing for the deposit of the next \$250,000 of the net proceeds of the fee into the Solid Waste Management Board Reserve Fund is the controlling language, and thus mandates deposit of the next \$250,000 into the fund. If the Water Development Authority makes a determination and certification regarding the status of the fund, then the deposit amount could be raised or lowered within the limits specified in the provisos, but we don't think certification by the Water Development Authority is a necessary precondition for DEP to deposit the \$250,000 into the fund."

Cause: According to DEP, they have not received a determination from the Water Development Authority so they have not made the transfers. Also the "Solid Waste Fee Collected by the State Tax Department Dedication of Proceeds" flow chart, states "Next \$50,000-\$500,000 (with certification to WVDEP and need in Reserve Fund)" to be deposited in the DEP Solid Waste Management Board Reserve Fund 3265.

Effect: Since transfers are not being made, the Solid Waste Management Board Reserve Fund has not received funds of approximately \$1,250,000 over a period of five fiscal years, Fiscal Years 2006 - 2010, based on a transfer of \$250,000 per year.

Recommendation: We recommend that DEP comply with Chapter 22, Article 15, Section 11(h) of the W. Va. Code and transfer Solid Waste Assessments Fees to the Solid Waste Management Board Reserve Fund annually or seek a statutory change from the Legislature.

Spending Unit's Response:

DEP agrees that the statute is awkwardly drafted. DEP has transferred funds to the Solid Waste Management Board upon receipt of a determination of adequacy/inadequacy from the Water Development Authority, as prescribed in 2-15-11(h). The Water Development Authority certified the SWMB Reserve Fund was adequate to defer any contingent liabilities associated with the outstanding Solid Waste Disposal Revenue Bonds, Series 1990C on four occasions (fiscal years 1998, 1999, 2000 and 2001). A transfer of \$50,000 was made for each certification, for a grand total of \$200,000. As of June 9, 2011, the \$200,000 remains in the Solid Waste Management Board Reserve Fund.

As outlined in 22-15-11(h)(2), the Solid Waste Management Board Reserve Fund is exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to article three, chapter twenty-two-c of this code. There is no longer a need for solid waste revenue bonding in West Virginia.

Lastly, please see the "Solid Waste Fee Collected by the State Tax Department Dedication of Proceeds" flow chart, below. In the highlighted box, it states "Next \$50,000-\$500,000 (with certification to WVDEP and need in Reserve Fund)" to be deposited in the DEP Solid Waste Management Board Reserve Fund 3265.

Solid Waste Fees Collected by the State Tax Department
 Effective July 9, 2006
 Originated in State Tax Department, received by DEP 8/11/05
 Dedication of Proceeds
 Effective July 9, 2005
 Edited RD DEP 8/15/05, edited KW DNR 8/1/05

Fee	WV Code Citation	Rate Per Ton	Agency & Fund Number	Sub-Allocation	Note	Agency & Fund Number
Solid Waste Assessment Fee	22-15-11(a)	\$1.75	DEP Solid Waste Management Board - Planning Fund 3288 (c)	\$0.25	Pollution prevention and open dump remediation	DEP - Solid Waste Reclamation & Environmental Response Fund 3332
				\$1.50	First \$1,000,000 must be deposited in 3333	DEP - Solid Waste Enforcement Fund 3333
					Next \$50,000 - \$500,000 (a) (with certification to WVDEP and need in Reserve Fund)	DEP Solid Waste Management Board - Reserve Fund 3285
					Any remaining funds are deposited in 3333 and then allocated between 3333, 3285 and 3332 per discretion of WVDEP Cabinet Secretary (a) (b)	
					Remainder (a)	DEP - Solid Waste Enforcement Fund 3333
Solid Waste Assessment Interim Fee	22C-4-30(a)	\$1.00	DEP Solid Waste Management Board - Planning Fund 3288 (c)		50% is divided equally, on a per county basis, among County and regional solid waste authorities (c); 50% is used for grants to county or regional SWA and for expenses of the Board.	
					50% (equivalent to \$1.00 per ton)	Grants to assist municipalities, counties and other interested parties
Recycling Assessment Fee	22-15A-19(a)	\$2.00	DEP Solid Waste Management Board - Planning Fund 3288 (c)	12.5% (equivalent to \$0.25 per ton)	Personal Services and benefit expenses of full-time salaried conservation officers	DNR - Law Enforcement Fund 3204
				12.5% (equivalent to \$0.25 per ton)	Expenses related to SWMS	DEP Solid Waste Management Board - Planning Fund 3288 (c)
				12.5% (equivalent to \$0.25 per ton)	Pollution prevention and open dump remediation	DEP - Solid Waste Reclamation & Environmental Response Fund 3332
				12.5% (equivalent to \$0.25 per ton)	Expenses related to Hazardous Waste Emergency Response	DEP - Hazardous Emergency Response Fund 3331
					Up to \$0.50 per ton may be transferred to 3333 at the discretion of WVDEP Cabinet Secretary	
Solid Waste Assessment Fee (Landfill Closure)	22-16-4(a)	\$3.50	DEP - Landfill Closure Cost Assistance Fund 3328 (a)			
Total		\$8.25				

(a) See WV code for contingent dedications.
 (b) Subsequent allocation by DEP Secretary
 (c) Subsequent allocation by DEP SWMS

- | | |
|--|---|
| Fund Number and Title
3285 - Solid Waste Management Board Reserve Fund
3288 - Solid Waste Management Board Planning Fund
3328 - Landfill Closure Cost Assistance Fund
3332 - Solid Waste Reclamation & Environmental Response Fund | Fund Number and Title
3331 - Hazardous Waste Emergency Response Fund
3333 - Solid Waste Enforcement Fund
3487 - Recycling Assistance Fund
3204 - Law Enforcement Fund |
|--|---|

Ordinance of Solid Waste Fees Updated_TAXDEPT.doc Tot of 8.25

8/27/2008

Finding 9 Appropriating Unauthorized Monies

Condition: The West Virginia Stream Partners Program is subject to annual appropriation of the Legislature. Prior to FY 2008, the DNR kept the accounting records for the program. We reviewed the Budget Bills for Fiscal Years 2008 – 2010 to determine the amounts & funds appropriated for the program. The schedule below shows the funds, amount appropriated from the Budget Bill and amounts spent based on DEP Grant Ledgers and WVFIMS. We were informed by the Stream Partners Project Coordinator there was a \$100,000 dollar grant requirement, however, the DEP could not provide us with documentation to support the requirement.

<u>Fund</u>	<u>Grants Awarded FY 2008-2010 (Approx)</u>	<u>Appropriations FY 2008-2010</u>	<u>Difference</u>
0273	\$ 77,396.00	\$77,396.00	\$ 0.00
3220	12,593.00	0.00	12,593.00
3327	68,998.00	0.00	68,998.00
3349	<u>28,344.00</u>	<u>0.00</u>	<u>28,344.00</u>
Total	<u>\$187,331.00</u>	<u>\$77,396.00</u>	<u>\$109,935.00</u>

Criteria: W. Va. §20-13-3, as amended, states in part:

“Subject to annual appropriation of the Legislature. . .”

W. Va. §22-1-14, as amended, states in part:

“(b) Expenditures from the fund are not authorized from collections but **shall only be authorized by line item appropriation by the Legislature.** The moneys are to be used and expended for the restoration and enhancement of the streams and water resources of this state which have been affected by coal mining or acid mine drainage.”

Cause: According to the Environmental Resources Specialist Supervisor, “The Legislation calls for \$100,000 in funding for the grants. General Revenue cuts have reduced funding to \$77,396. In accordance to 22-1-14 of state code DEP used Fund 0273 to fund those approved grants that fit the criteria.”

Effect: As a result of issuing non-appropriated funds from special revenue accounts to stream partner's recipients, the DEP is in noncompliance with the West Virginia Code. Also, by using special revenue funds which are not authorized to be spent for these grants, less funds are available for other programs and projects of the DEP.

Recommendation: We recommend that the DEP comply with West Virginia Code 20-13-3 & 22-1-14, and the appropriate Budget Bills.

Spending Unit's Response: *DEP disagrees with the finding. DEP is using the budget bill line item appropriation amount as it is intended. DEP supplements this general revenue with special revenue to keep the grant amounts at their original level.*

Finding 10

Lack of Monitoring over Solid Waste Assessment Fees Transfers

Condition:

The DEP does not perform any reconciliation or other type of monitoring over the allocation of the Solid Waste Assessment Fees by the Tax Department to the various DEP Funds. We obtained the Tonnage Reports provided to DEP from the West Virginia Tax Department (Tax) for the period of July 1, 2005 through June 30, 2010 and using the approved Allocation Schedule attempted to recalculate the approximately \$59,000,000 received by the DEP from the Tax Department. The fees were not allocated according to the allocation schedule for 9 of the 60 months tested. There were another two months, which we noted differences between our audited allocations and the actual allocations performed due to the amount disbursed by Tax. For those two months, there was no documentation to support why the Tax Department’s amounts did not match. The schedule below shows the results of our test and the amount Over/(Under) Allocated by Fund (rounded to nearest dollar).

DATE	FUND 3328	FUND 3331	FUND 3332	FUND 3333	FUND 3487	FUND 3204*	FUND 3288*	TOTALS
Jul-05	\$ 5,622.00	\$ (703.00)	\$ (703.00)	\$ -	\$ (2,811.00)	\$ (703.00)	\$ (703.00)	\$ (1.00)
Aug-05	7,942.00	(996.00)	(993.00)	1.00	(3,974.00)	(994.00)	(984.00)	2.00
Sep-05	10,317.00	(1,293.00)	(1,290.00)	-	(5,162.00)	(1,290.00)	(1,282.00)	-
Dec-05	181.00	(41.00)	(28.00)	78.00	(162.00)	(41.00)	13.00	-
Jun-08	207.00	13.00	13.00	-	52.00	13.00	(298.00)	-
Jul-08	261.00	16.00	16.00	-	65.00	16.00	(376.00)	(2.00)
Dec-08	(26,724.00)	(1,909.00)	(3,818.00)	(11,454.00)	(7,636.00)	(1,909.00)	(9,545.00)	(62,995.00)
Jan-09	(3,518.00)	(257.00)	(509.00)	(1,508.00)	(1,029.00)	(257.00)	(1,263.00)	(8,341.00)
Feb-09	11,049.00	(2,466.00)	(1,677.00)	4,735.00	(9,865.00)	(2,466.00)	691.00	1.00
Nov-09	8,619.00	(1,924.00)	(1,308.00)	3,693.00	(7,695.00)	(1,924.00)	539.00	-
May-10	3,295.00	(735.00)	(500.00)	1,412.00	(2,941.00)	(735.00)	206.00	2.00
TOTAL	\$ 17,251.00	\$ (10,295.00)	\$ (10,797.00)	\$ (3,043.00)	\$ (41,158.00)	\$ (10,290.00)	\$ (13,002.00)	\$ (71,334.00)

* These two funds are not DEP funds; however, they are included in the allocation of the Solid Waste Assessment Fee performed by the Tax Department.

Criteria:

W.Va. Code §22-15-11-h, as amended, states in part:

“...Dedication of proceeds. -- The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited at least monthly in an account designated by the director. The director shall **allocate twenty-five cents for each ton . . . and shall deposit the total amount so allocated into the "Solid Waste Reclamation and Environmental Response Fund"** . . . The **first one million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the "Solid Waste Enforcement Fund"** . . . The **next two hundred fifty thousand dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the "Solid Waste Management Board Reserve Fund"**, . . . The director **shall allocate the remainder, if any, of said net proceeds** among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the state treasury: . . .(1) The "Solid Waste

Enforcement Fund" . . .(2) The "Solid Waste Management Board Reserve Fund" . . .(3) The "Solid Waste Reclamation and Environmental Response Fund". . ." **(Emphasis Added)**

W. Va. Code §22-15A-19, as amended, states in part:

"a . . . A recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of \$2 per ton or part of a ton of solid waste. The fee imposed by this section is in addition to all other fees levied by law. . .h. . .The proceeds of the fee collected pursuant to this section shall be deposited by the Tax Commissioner, at least monthly, in a special revenue account designated as the **Recycling Assistance Fund** which is hereby continued and transferred to the Department of Environmental Protection. The secretary shall allocate the proceeds of the fund as follows: . . (1) **Fifty percent of the total proceeds shall be provided in grants** to assist municipalities, counties and other interested parties . . . (2) **Twelve and one-half percent of the total** proceeds shall be expended for personal services and benefit expenses of full-time salaried natural resources police officers; (3) **Twelve and one-half percent of the total proceeds shall be directly allocated to the solid waste planning fund;** (4) **Twelve and one-half percent of the total proceeds shall be transferred to the Solid Waste Reclamation and Environmental Response Fund, . . .** (5) **Twelve and one-half percent of the total proceeds shall be deposited in the Hazardous Waste Emergency Response Fund ..."** **(Emphasis Added)**

W. Va. Code §22-16-4, as amended, states in part:

"a . . . A solid waste assessment fee is levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this State in the amount of **three dollars and fifty cents per ton**. . .The fee imposed by this section is in addition to all other fees and taxes levied by law. . . (h) Dedication of Proceeds. . .(1) The **proceeds of the fee collected pursuant to this section shall be deposited in the Closure Cost Assistance Fund...**" **(Emphasis Added)**

W. Va. Code §22C-4-30, as amended, states in part:

"a . . . A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this State to be collected at the rate of **one dollar per ton**. The fee imposed by this section is in addition to all other fees levied by law. . .(h) the net proceeds of the fee collected by the Tax Commissioner shall be deposited, in a special revenue account known as **the Solid Waste Planning Fund** which is hereby continued..." **(Emphasis Added)**

Cause:

According to DEP, the funds were allocated per Tax, and due to a Tax computer system change the supporting documentation for Dec. 2008 and Jan. 2009 was not available. DEP also informed us that they do not monitor transfers from Tax and that we should address our questions directly to Tax.

Effect: As a result of not monitoring the Solid Waste Assessment Fee transfers made by Tax, some Special Revenue Accounts are over/understated in the DEP financial statements, and the DEP may not be receiving all monies due.

Recommendation: We recommend that DEP comply with W. Va. Code §22-15-11, §22-15A-19, §22-16-4, §22C-4-30 and allocate Solid Waste Assessments Fees in the proper amounts to the proper funds. We further recommend that DEP develop internal controls to reconcile Solid Waste Assessment Fee deposits to Tax Department Monthly Tonnage Reports and keep an electronic copy of all Monthly Solid Waste Tonnage Reports received from the West Virginia State Tax Department as part of their back up documentation for each deposit.

Spending Unit's Response: *DEP disagrees with the finding. DEP has not allocated the solid waste assessment fees to the various funds, per WV Code 22-15, 15A, 16, since FY 1997. At that time the West Virginia State Tax Department determined it was their responsibility to distribute the proceeds of the solid waste collection (see 110CSR6A). The Tax Department has been distributing the proceeds since that time. Along with this distribution, the Tax Department includes a report that shows the total collected and the breakout of all funds. DEP reviews this report for reasonableness and if anything appears out of line, the DEP works with the Tax Department to get it corrected.*

Finding 11

DEP Exceeded Administrative Expense Allowance for Fund 3328

Condition: The DEP exceeded their administrative expense allowance for the Closure Cost Assistance Fund (Fund 3328). Fund 3328 has an administrative allowance of 2% of deposits. During Fiscal Year 2010, there were deposits of \$6,115,883. We performed analytical review using the types of expenditures made from Fund 3328 and calculated expenditures related to Administrative Expenses totaled approximately \$265,000, or 4% of deposits. The DEP addressed this deficiency in the Landfill Closure Assistance Program Update 2010.

Criteria: W. Va. Code §22-16-12, as amended, states in part:

“. . . (e) The amounts deposited in the fund may be expended only on the cost of projects as provided for in sections three and fifteen of this article, as provided in subsection (f) of this section and for payments of bonds and notes issued pursuant to section five of this article. **No more than two percent of the annual deposits** to such fund may be used for administrative purposes. . .” **(Emphasis Added)**

Cause: According to the Landfill Closure Assistance Program Update 2010 pg. 27: “. . . Administrative allowance of two percent of the closure fund appears inadequate using the current structure. An increase to a minimum five percent as suggested in the 1992 Pan is reasonable. . .”

Effect: The Landfill closure Assistance Program is unable to function with the administrative allowance allowed by W. Va. Code, therefore due to monetary restrictions, some projects may not be monitored as effectively.

Recommendation: We recommend the DEP seek Legislative approval to amend W. Va. Code §22-16-12 to increase the allowance for administrative expenditures.

Spending Unit’s Response: *DEP agrees with this finding and this has been corrected.*

Finding 12

Loan Repayments Deposited into Improper Fund

Condition:

In October 1996, DEP entered into a loan agreement with the Tucker County Solid Waste Authority. DEP provided Tucker County with a loan in the amount of one million dollars. DEP used funds from Fund 3332 (Solid Waste Reclamation and Environmental Response Fund) to provide Tucker County with the monies. The loan agreement stated monies would be repaid to DEP over 12 years at 1%. During our review of Fund 3333 (Solid Waste Enforcement Fund), we noted loan repayment monies were being deposited into Fund 3333 instead of Fund 3332. As of September 2010, the loan was completely repaid including \$61,627.93 interest. All of these monies had been deposited into Fund 3333. We also noted the DEP had classified \$21,353.27 of principle repayments as interest and the related \$763.72 of interest was classified as principle repayments. We inquired with our Legal Services concerning that section of Code, their response is below:

“. . . it appears to us that the loan repayment monies probably should have been deposited into the Solid Waste Reclamation and Environmental Response Fund since the monies from that fund were the source of the loan. Our understanding of §22-15-11(h) is that it authorizes the Director (Secretary) to allocate the net remainder of the proceeds from the solid waste assessment fee among The Solid Waste Enforcement Fund, the Solid Waste Management Board Reserve Fund and the Solid Waste Reclamation and Environmental Response Fund after the statutory requirements for the funding of each fund from the solid waste assessment fee are met. It does not appear to us that §22-15-11(h) authorizes the general transfer of monies from one fund to another, or authorizes the reallocation of loan repayment monies from the Solid Waste Reclamation and Environmental Response Fund into the Solid Waste Enforcement Fund.”

Criteria:

West Virginia 1997 Budget Bill states in part:

“178—Division of Environmental Protection Solid Waste Reclamation and Environmental Response Fund. . .It is the intent of the Legislature that a maximum loan of \$1 million be made to Tucker County Solid Waste Authority at a rate of 1% interest for the term of 12 years utilizing funds from Fund 3332, Solid Waste Reclamation and Response Fund . . .”

W. Va. Code §22-15-11(h), as amended, states in part:

“. . . The director shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the state treasury: **(1)** The Solid Waste Enforcement Fund which shall be expended by the director for administration, inspection, enforcement and permitting activities established pursuant to this article; **(2)** The Solid Waste Management Board Reserve Fund which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste

management board pursuant to article three [22C-3-1 et seq.], chapter twenty-two-c of this code; **(3)** The Solid Waste Reclamation and Environmental Response Fund which may be expended by the director for the purposes of reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

Cause: According to the DEP Controller, the then Chief of the Division of Waste Management, “conveyed the instructions that the repayment money be deposited into 3333. They [Program Staff] also mentioned that according to W. Va. Code 22-15-11(h), DEP’s Cabinet Secretary has the discretion to move monies as needed between accounts 3333, 3332 and 3328 and that might have played a role in his decision. Unfortunately, most of the folks making the decisions back then are no longer with the agency so we can’t find out anymore about it.”

Effect: As a result of depositing monies into the incorrect fund, we believe that Fund 3332 revenues are understated and Fund 3333 revenues are overstated. Also the funds were created for separate purposes and by not depositing the monies in Fund 3332 the DEP was not able to use the repayments to help pay for “reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment. . .”

Also by misclassifying payments as interest and vice versa the accounting records are misstated and the loan appears to have an unpaid balance.

Recommendation: We recommend that the DEP comply with the Budget Bill and deposit monies into the proper fund.

Spending Unit’s
Response:

DEP agrees with this finding and offers the following explanation. When the loan was made in 1999 all tipping fee (solid waste assessment fee) money flowed from tax and revenue into the “clearing house” fund, 3333. From there, it was disbursed to the other appropriate funds as prescribed. The loan’s “best fit” was under the statutory uses for 3332 (see 22-15-11(h)(3) as opposed to the 3333 (see 22-15-11(H)(1)). The money actually came from the balance in 3333, and was then routed thru 3332 for the loan. Hence, the repayment is going back to 3333. The loan was paid off in September 2010.

Finding 13

Misclassified Revenues/Reimbursements

Condition:

1. NPDES Revenues

During our reconciliation of the ERIS Revenue Report to WVFIMS Cash, we noted the DEP was depositing collections for the West Virginia National Pollution Discharge Elimination System Water Pollution Control Permits (NPDES) using Revenue Sources 253 and 867. We believe these should have been classified as Revenue Source 560 – Water Pollution Control Permits. During Fiscal Years 2006 – 2009 the DEP deposited revenues related to NPDES permits/fees of approximately \$13,514,889 and \$7,245,901, using Revenue Source 253 and 867, respectively.

2. Dam Certification Fees

During our review of Fund 3206 revenues, we noted the DEP deposited fees totaling approximately \$138,288 during Fiscal Years 2006 through 2010 to a revenue source code other than 654 as follows:

- Extended Revenue Source 210 \$153
- Extended Revenue Source 252 \$100
- Extended Revenue Source 253 \$63,235
- Revenue Source 867 \$74,500
- Revenue Source 876 \$300

3. Gifts and Donations

The DEP recorded 493 deposits, totaling approximately \$414,799, for Revenue Source 670 (Gifts and Donations) for the period of July 1, 2005 – June 30, 2010. Using professional judgment, we selected 79 deposits, totaling approximately \$280,823 for further review. During our review, we noted two out of 79 instances where the DEP paid the U.S. Geological Survey (USGS) for the operation of a stream gauge for Dominion Power from object code 025 (Contractual and Professional). Based upon the U.S. Geological Survey Joint Funding Agreement for Water Resources Investigations, between the USGS and the DEP, Dominion Power reimbursed the DEP approximately \$ 20,350 for the stream gauge. The DEP deposited these reimbursed monies into revenue code 670 (Gifts and Donations). However, we believe that monies should have been deposited back into the same object code they were originally expensed from.

4. Environmental Laboratory Certification Audit Fees

During our reconciliation of the Environmental Lab Certification Deposit Logs to WVFIMS, we noted one instance totaling \$995 was misclassified as a reimbursement to Object Code 029 – Vehicle Rental when it should have been classified as Object Code 026 – Travel.

Criteria:

The 2010 State of West Virginia Expenditure Schedule Instructions states in part:

“. . . **Revenue Classes 502 – 595** . . . Although this section of revenue classes is primarily designated for General Revenue collections, these classes can be used to account for revenues collected in an agency’s federal or special revenue accounts.”

“ . . . **026 - Travel:** Payments for authorized in-state and out-of-state travel expenses in accordance with the State Travel Regulations as issued by the Travel Management Office, Division of Purchasing, Department of Administration and other approved travel plans.”

“ . . . **029 - Vehicle Rental:** Auto, aircraft (i.e., fixed wing and helicopter), farm equipment (off road) rental, earth moving, hauling, and DOH emergencies for snow/flood.”

“ . . . **560 – Water Pollution Control Permits** – Revenues generated from the sale of water pollution control permits.”

“ . . . **654 - Dam Control Permits:** Revenues provided for permits for dam control.”

“ . . . **670 – Gifts and Donations** – Used to record private, state and local gifts and donations.”

“ . . . **696 [used for extended revenue Source Codes 210, 252, and 253] - Other Collections, Fees, Licenses and Income:** Miscellaneous collections, fees, licenses, and income. (Not for collection of state imposed taxes - Use Revenue Source 878.)”

“ . . . **867 - Operating Permit Fees:** Fees to obtain the renewals and permits for surface mining.”

“ . . . **876 - Employer Premium Recoveries:** Premiums collected as a result of third party collection”

According to an email received from the West Virginia State Auditor’s Office on May 12, 2010:

“If the reimbursement is received in the same fiscal year as the expenditure was processed, the reimbursement should be deposited back to the same object code the expenditure was made from. If the reimbursement is received in a different fiscal year than the expenditure was processed, the reimbursement should be deposited using Revenue Source 564 – Prior Year Expiring Funds”

Cause:

1. According to the Accountant/Auditor 3, “The fees go into a Special Revenue Account. Since Revenue Source Code 867 falls into the series of numbers for Special Revenue, it appeared appropriate. . . After review the WVDEP has continued to use object 867 for deposit . . . Revenue class 640 (which revenue source 867 rolls to) designates revenue derived from special revenue collections. . . The current accounting structure allows for the adequate tracking of these revenues. In order to maintain consistent accounting practices, the WVDEP prefers to continue to use the special revenue source.”

2. According to the Accounts Receivable Manager “ . . . Mining & Reclamation chose this revenue source because these permits are for dams on surface mining sites. Revenue source 253 was used by Water Resources because it is for permits. The

agency is not opposed to changing to the 654 revenue source in the future, but would like to do so beginning with the 2012 fiscal year.”

3. According to the Assistant Director, “Since this type of transaction only occurred once per year, likely there was simply not enough familiarity with the Auditor’s Office rules to select the correct object code. Most likely their instinct was – since this is a deposit, I must find a revenue code to use, not knowing the complete rules you described. The people involved do not routinely make deposits . . .”

4. According to DEP this misclassification is due to human error.

Effect: Due to the various misclassifications of revenues and reimbursements the state level financial statements were misclassified as follows:

State Level Revenue Source/Expenditure	\$ Amount Over/ (Under) Stated
560	(20,760,790)
654	(138,288)
670	20,350
696 (210, 252, 253)	13,578,377
867	7,320,401
876	300
025	20,350
026	995
029	(995)

Recommendation: We recommend that the DEP comply with the West Virginia Expenditure Schedule Instructions when depositing the various revenues into WVFIMS.

Spending Unit’s Response: *DEP agrees with the finding and has instructed staff on the correct revenue codes to use.*

Finding 14

Disbursing Restricted Groundwater Protection Fees as Unrestricted Monies to Contracted County Health Departments

Condition:

The DEP disbursed to various county health departments, which participated in the Sewage System Registration Fee Sharing Program, \$157,760 of the Groundwater Protection Fees for registering a septic tank for Fiscal Years 2006 through 2009. The payments were to counties which had been in the program for longer than one year and had signed a renewal (Year 2) contract. The DEP also gave 11 county health departments a total of \$32,400 for “seed monies” (initial funding). Neither the initial nor the renewal contract **requires** the monies provided to be restricted for use of supporting the collection of septic tank registration fees and gathering data on the installations. Instead the initial contract uses the term “**may**” and the renewal contract never mentions any restrictions on the monies. Also, the DEP provides a fact sheet which states “**there are no restrictions in place on the county health department as to their use of the fees**”. The DEP contracts with county health departments to collect the fees and gives the health departments back 50% of the monies submitted to DEP for septic seals during the prior calendar year, it also provides an initial funding based on the number of seals issued the previous calendar year. We believe the Groundwater Protection Fund Fees are restricted in nature and may only be used to administer the Groundwater Protection Act.

We provided copies of the initial and renewal contracts as well as the code section governing these fees to the Legislative Services Legal Division and asked if the DEP is in noncompliance with the Groundwater Protection Act by remitting these monies back to the health departments as “unrestricted” moneys. The response is below:

“If the DEP is remitting the moneys to the counties for the administration, certification and other activities of the county health departments, then the moneys **should** be used by these county health departments for the purposes set forth in W. Va. Code §22-12-9, and the monies should not be remitted back to the county health departments as “unrestricted” monies.”

Criteria:

W. Va. Code §22-12-9, as amended, states in part:

“(a) The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater protection fees . . . Such fees in the aggregate shall not exceed one million dollars per year and shall be deposited into the groundwater protection fund established pursuant to this article: Provided . . .”

“(c) (1) The "Groundwater Protection Fund", the moneys of which **shall** be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research and other activities . . . in accordance with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The moneys . . . in said fund shall be kept and maintained by the director and expended . . . for the purpose of implementing the provisions of this article. . .”

The 1st Year Contract Agreement between the WV Bureau of the Environment, Department of Environmental Protection, Division of Water Resources and the XXXXX County Health Department states in part:

“. . . The **DIVISION** agrees to provide initial funding in the amount of **\$XXXXX** to the **RECIPIENT** so that the **RECIPIENT** upon receipt of such funding **may** support the collection of septic tank registration fees and gather data on the installation of such systems.” **(Emphasis Added)**

Sewage System Registration Fee Sharing Program Department of Environmental Protection Division of Water and Waste Management Information Sheet states in part:

“7. . . This one time funding **may** be used to support the collection of septic tank registration fees and the gathering of the data on the installation of the system.”

“14. There **are no restrictions in place** on the county health department as to their use of the fees.” **(Emphasis Added)**

Cause: DEP believes the language in the first year contract is sufficient for restricting groundwater monies.

Effect: As a result of remitting \$190,160 to contracted county health departments with no restrictions as to the use of the funds, the DEP is not complying with the Groundwater Protection Act. As such, restricted monies may be used for purposes other than those set out by the Legislature causing less monies to be available to administer the provisions of the Groundwater Protection Act.

Recommendation: We recommend the DEP comply with W. Va. Code §22-12-9, as amended and (1) Restrict all Groundwater Protection Fee expenditures to those incurred to administer the Groundwater Protection Act, (2) Revise their Sewage System Registration Fee Sharing Program Fact Sheet and include a statement that these monies are in fact Groundwater Protection Fees and are restricted in nature to the purposes listed in the aforementioned code section, (3) Amend the contract to reflect that monies are restricted for Groundwater Protection Purposes, (4) Notify all contracted counties of this restriction, and (5) Strengthen internal controls over the monitoring of the Program by establishing policies and procedures over expenditures made to contracted county health departments, including how DEP will monitor and ensure that monies are only being used for Groundwater Protection Act purposes.

Spending Unit's Response: *DEP disagrees with this finding. Language restricting the use of the money provided is included in all contracts with the county health departments. DEP will look at further strengthening this language. In addition, the information fact sheet provided to counties has been changed to reflect stronger wording.*

Finding 15

DEP Does Not Pursue Collections over Septic Tank Seal Groundwater Fees

Condition:

We noted \$77,469 or 2,245 septic tanks were uncollected or had a credit balance as of June 30, 2010. DEP does not pursue collections for persons who do not pay the \$30 Groundwater Protection Fee and register their septic tanks. The schedule below shows the makeup of the uncollected balance as of June 30, 2010. Almost all of the Invoices with Credit Balances listed on the Uncollected Report were prior to the beginning date of our audit period (July 1, 2005).

	Number of Invoices	Amount	Average Days Outstanding	Range of Days Outstanding
<i>Invoices with Unpaid Balances</i>				
Contract Counties	12	\$ 360.00	1,594.5833	242 - 3,676
Non-Contract Counties	<u>2,207</u>	<u>\$77,741.00</u>	1,520.6874	30 - 2173
Total Invoices with Unpaid Balances	<u>2,219</u>	<u>\$78,131.00</u>		
<i>Invoices with Credit Balances</i>				
Contract Counties	7	(\$ 110.00)	1,407.8571	785 - 2,355
Non-Contract Counties	<u>19</u>	<u>(\$ 522.00)</u>	1,637.2632	422 - 2,173
Total Invoices with Credit Balances	<u>26</u>	<u>(\$ 632.00)</u>		
Total Uncollected as of June 30, 2010	<u>2,245</u>	<u>\$77,469.00</u>		

Criteria:

W. Va. Code §22-12-9, as amended states in part:

“(1) The "Groundwater Protection Fund", the moneys of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research and other activities of the environmental quality board, division of environmental protection, **bureau of public health** and department of agriculture in accordance with legislative rules . . . The moneys, including the interest thereon, in said fund shall be kept and maintained by the director and expended without appropriation by the Legislature for the purpose of implementing the provisions of this article. The director may withhold the payment of any such moneys to any agency whose groundwater protection program has been determined by the director, in consultation with the groundwater coordinating committee, not to be sufficient to satisfy the requirements of this article and where such agency has failed to adequately address such determination within the time period specified by the director. . .”

“(a) The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater protection fees . . . Such fees in the aggregate shall not exceed one million dollars per year and shall be deposited into the groundwater protection fund established pursuant to this article: Provided . . .”

W. Va. Code §22-12-10, as amended, states in part:

“(c) Any person who violates any provision of this article . . . is subject to a civil administrative penalty . . . of **not more than five thousand dollars for each day** of such violation, **not to exceed** a maximum of **twenty thousand dollars** . . .”

Legislative Rule Title 47 Series 55, 3.5, as amended, states in part:

“Schedule of groundwater protection fund fees – The annual groundwater protection fund fee . . . except subsection 3.5.c of this rule which is a **one time registration fee due prior to installation** . . . :

3.5.c. Septic Tank Registration Seals - \$30.00 each. These seals are to be purchased from the division of environmental protection, office of water resources.”

The Agreement between the DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIVISION OF WATER AND WASTE MANAGEMENT AND THE COUNTY HEALTH DEPARTMENTS:

“The **RECIPIENT** agrees to remit the completed registration forms for septic tank seals along with fees collected to the **DIVISION** within fifteen (15) days of the end of each month, or on a more frequent basis if possible.”

Cause: According to the Environmental Resources Program Manager 2, “The Department of Environmental Protection does not pursue collections for persons who do not register their septic tanks because the \$30 per tank registration fee is so minimal and DEP does not want to tie up the circuit court.” However, if DEP chose to pursue collections, the Office of Legal Services would file a civil suit in the circuit court and DEP would go after the maximum civil penalty, which is not to exceed \$25,000 per day. The DEP does not know why the contract counties did not remit fees within 15 days.

Effect: By not enforcing the Groundwater Protection Act and its related Legislative Rule and not pursuing collections on unregistered tanks, DEP is in noncompliance and the State is losing the \$77,469 owed plus the lost interest earnings if this money had been collected and deposited. By not monitoring the septic tanks in the state, there is a possibility there are individuals with unregistered septic tanks which could potentially affect the groundwater.

Recommendation: We recommend DEP begin to pursue collections for persons who have obtained septic tank installation permits from county health departments and have not registered their tanks with DEP.

Spending Unit’s Response: *DEP disagrees with this finding. DEP does pursue payment of invoices and does issue a second notice invoice if payment is not received. DEP has begun discussions to develop a policy on uncollected/uncollectible fees in amounts too small to warrant legal action.*

Finding 16 **Noncompliance with Legislative Rule Title 47 Series 55 Groundwater Protection Act Fee Schedule**

Condition: The DEP is not issuing septic tank registration seals prior to tank installation. Rather, DEP issues the seals after a person obtains a county health department permit to install the tank. If the county health department issuing the permit participates in the Sewage System Registration Fee Sharing Program the \$30 fee is collected when the permit is issued prior to tank installation. However, counties which do not participate in this program (20 non-contract counties) do not collect the groundwater fee. Instead, twice a year, the DEP receives a list from the State Health Department which lists all septic tank permits issued, DEP checks this list against issued seals in the DEP ERIS Database and bills anyone who is on the State Health Department list and does not have a seal issued. During Fiscal Years 2006 through 2010, the DEP collected \$94,270 from non-contract counties.

Criteria: Legislative Rule Title 47 Series 55, 3.5 states in part:

“Schedule of groundwater protection fund fees – The annual groundwater protection fund fee . . . except subsection 3.5.c of this rule which is a **one time registration fee due prior to installation** . . . :

3.5.c. Septic Tank Registration Seals - \$30.00 each. These seals are to be purchased from the division of environmental protection, office of water resources.”

Cause: According to the Environmental Resources Program Manager 2, “For the counties we have under contract the \$30 fee is collected at the time the individual goes to the county health department to obtain an installation permit. The fee is collected before the tank is installed. For the counties that are not under contract the county health departments advises the individual of the fee and provides them a WVDEP Septic Tank Seal pamphlet with the information on how to pay. The state health department provided us a list of installation permits issued and we check that list against fees collected. If the individual has not paid we send an invoice and if they still have not paid we send a second invoice.”

Effect: By issuing seals after the health department permit is obtained and monies are remitted and not requiring that a seal be obtained prior to the aforementioned Legislative Rule, DEP is in noncompliance. Also, there is the possibility of individuals obtaining a health department permit, installing a septic tank, and never registering their septic tank.

Recommendation: We recommend the DEP comply with the Legislative Rule Title 47 Series 55 and require that all septic tanks be registered and issued a seal prior to installing the tank in the ground, or amend the Legislative Rule.

Spending Unit’s
Response: *DEP agrees with the finding that these fees are not received prior to tank installation in all counties. In the counties under contract with DEP, the county health department collects the groundwater fee when they collect the permit fee; prior to installation. In non-contract counties, the owners are billed when DEP receives the*

information from the State. DEP will look at changing Rule Title 47 Series 55 and will pursue getting more counties under contract.

Finding 17

Lack of Internal Controls over Agriculture Groundwater Protection Fees

Note: This finding is with our Legal Division and may be subject to changes based on their response.

Condition:

We noted various weaknesses in the monitoring and enforcement of the Agriculture Groundwater Protection Fees:

1. The West Virginia Department of Agriculture (AG) is not providing the DEP a list of the previous state fiscal year activities by October 1 as required by the Agreement between the DEP and the AG. Instead, they provided a list to DEP every fall for pesticides registered from January 1 through the date the list was provided in October of each year. The AG uses the calendar year for their registration period with the months of November and December as the renewal period. The AG performs certification, enforcement, inspection, and monitoring for these facilities.
2. The DEP does not pursue collection over unpaid balances. We noted there was a balance of \$48,030 as of June 30, 2010 for unpaid registration fees. Some of the unpaid registration fees had been outstanding since Fiscal Year 2000 (11 years). If an invoice is not paid, the DEP will send a second notice of invoice but has no procedures in place to assess penalties, cancel permits or pursue civil action. The DEP also does not inform AG of any facilities which have not paid the groundwater fee. AG is responsible for issuing permits to these facilities as well as any enforcement activities. According to the Groundwater Protection Act, the permits are to have language which requires the groundwater fees be paid. In addition to the unpaid fees, there were customer accounts with either overpayments or credit balances totaling \$16,449. These balances have not been applied to other invoices nor have the monies been refunded to the responsible parties. As of June 30, 2010, using the interest rate published by the State Tax Department for overpayment of taxes, the DEP owes customers with overpayment or credit balances approx. \$7,291 in interest in addition to the outstanding overpayment/credit balances.
3. During our review we noted the DEP had issued a West Virginia National Pollution Discharge Elimination System permit to a facility which had not paid the pesticide groundwater fees. Legislative Rule Title 47 Series 55 requires all groundwater protection fund fees be paid prior to issuing a permit. Also, by not informing AG of which facilities have paid their groundwater fees, the AG may be issuing permits to facilities which have unpaid fees. DEP policy is to have permit writers check the ERIS system to make sure all groundwater fees have been paid prior to issuing a permit.

Criteria:

W. Va. Code §22-12-9, as amended, states in part:

“c.1 The Groundwater Protection Fund, the monies of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring,

planning, research and other activities of the Environmental Quality Board, Division of Environmental Protection, Bureau of Public Health and Department of Agriculture”

W. Va. Code §22-12-10, as amended, states in part:

“(c) Any person who violates any provision of this article, or any permit or rule or order issued to implement this article, is subject to a civil administrative penalty to be levied by the director, the Commissioner of Agriculture or the Commissioner of the Bureau of Public Health, as appropriate, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars.”

Legislative Rule Title 47 Series 55 Groundwater Protection Act Fee Schedule states in part:

“2.1 “Agency” means any branch, section, division, department or unit of the state, county or local government . . .”

“2.13 “Permit” means any license, certification, registration, permit or any other approval granted by an agency authorized to regulate facilities, or activities, which may have an impact on groundwater.”

“3.1 . . .Any person whose activities may affect groundwater quality or who is required to obtain a permit from any **agency shall pay** the appropriate groundwater protection fund fees. . .”

“3.3.a Each **agency’s permit shall require that all groundwater protection fees be paid.** . . .The permit shall also contain language stating that failure to remit groundwater protection fund fees shall result in withdrawal or denial of groundwater certification, and subject the person to the penalties outlined in W. Va. Code §22-12-10.”

“3.3.a.2 **Prior to issuing a permit, each agency shall require all groundwater protection fund fees be paid.** . . .”

“3.5 Schedule of groundwater protection fund fees . . .3.5.a Registering a pesticide - - \$15.00”

The Agreement between the WV Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection, Office of Water Resources and the WV Department of Agriculture, Plant Industries Division, Pesticide Regulatory Programs signed Jan 4, 1994 (OWR No. 1003), states in part:

“The OFFICE [DEP], in recognition of the administration, certification, enforcement, inspection, monitoring, planning, research, and other activities of the RECIPIENT

[AG], agrees to compensate the RECIPIENT from fees collected and deposited into the Groundwater Protection Fund.”

And

“ . . . the RECIPIENT hereby agrees to provide the OFFICE with documentation of it’s previous state fiscal year activities, relating to 20-5M, in an appropriate format by October 1st of each year.”

Cause:

1. According to AG “Pesticide products are registered annually on a calendar year basis. We send renewals out in November and any products that are renewed will get a January registration date.”

2. The DEP has no procedures in place to inform the AG of any unpaid invoices. The DEP sends a second notice when invoices are not paid. According to the Groundwater Program Manager, “It appears that no attempt has been made in the past to collect the fees not paid. The reason would be staffing and the fee being \$15. I have asked for a list of past due fees so we can see what amount of money has not been collected.”

3. According to DEP, “there are issues with who has access to unpaid information in ERIS. We will work with the Information Technology section to correct this issue. . . not all fees are shown or accessible to the permit writer. . .”

Effect:

By not knowing which facilities have not paid the groundwater fees, AG may issue permits to facilities that owe groundwater fees. Also, the state is not receiving all monies due. DEP is also holding taxpayer’s monies and earning interest on those funds.

Facilities are being issued permits by DEP when they do not meet the requirements for the permit. The limitations of the ERIS system makes the internal control DEP has in place ineffective.

Recommendation:

We recommend the DEP amend the Agreement between the DEP and AG and strengthen internal controls over the groundwater fees such as, formulating procedures or policies over the collection, monitoring, and assessment of penalties for any unpaid billings. We also recommend the DEP inform AG of any facilities which have not paid the required groundwater fees. We further recommend the DEP either apply the credit balances to a future invoice or refund the monies, plus interest, to the responsible parties. Lastly we recommend the DEP strengthen internal controls to ensure any permits issued have paid the required groundwater fees.

Spending Unit’s
Response:

DEP agrees with this finding and is implementing a new billing process for the groundwater program to include the groundwater protection fee on invoices for other DEP activities to prevent the issuance of permits/certifications for activities when the groundwater fees have not been paid.

Finding 18

Interest and Late Fee Penalties not Assessed

Condition:

During our audit of the Hazardous Waste Emergency Response Fund, we reviewed the ERIS Revenue Reports for any invoices paid after the 168 days allowed by W. Va. Code §22-19-4. The code states fees are due and payable on the fifteenth of January of each year. However Title 33 Series 26 of the Code of State Rules states if the fee schedule is not published by August 1, the fees are due within 168 days of the publishing of the fee schedule. For both the 2005 & 2007 assessments (FY 2006 & 2008) the fee schedules were published in September. There were 206 invoices paid during Fiscal Years 2006 – 2008, totaling approximately \$1,034,520. The assessment fee has not been assessed since FY 2008. We noted 19 invoices, totaling approximately \$130,000, were received after the 168 day grace period allowed by the Code of State Rules. We noted DEP did not charge any of these companies for interest and/or surcharges for invoices paid after the 168 day grace period. The interest and late fee penalties, if charged, would have totaled approximately \$14,600.

Criteria:

W. Va. Code §22-19-4, as amended, states in part:

“c) Generator fee assessments are due and payable to the division of environmental protection on the fifteenth day of January of each year. . .(d) If the fees or any portion thereof are not paid by the date prescribed, interest accrues upon the unpaid amount at the rate of ten percent per annum from the date due until payment is actually made. Such interest payments shall be deposited in the fund. If any generator fails to pay the fees imposed before the first day of April of the year in which they are due, there **is imposed in addition** to the fee and interest determined to be owed a surcharge equivalent to the total amount of the fee which **shall also be collected** and deposited in the fund.” **(Emphasis Added)**

Title 33 Series 26 of the Code of State Rules states in part:

“5.2.a Generator fee assessments are due and payable to the department on the fifteenth day of January (January 15) of 2004 and each succeeding year thereafter, except as provided in subdivision 5.2.b of this rule.”

“5.2.b If a fee schedule is not published by the first day of August (August 1) of each year, generators upon whom fees are assessed pursuant to Article 19 must pay such fees within one hundred and sixty-eight (168) days after the publication of the fee schedule in the state register.”

Cause:

According to the Accounts Receivable Manager, “It does not appear to me that any interest or late fee penalties were charged to these invoices. I wasn’t in the Accounts Receivable Manager position when these billings were processed, and I have yet to process one.”

Effect:

As a result of not charging interest and late fee penalties for invoices paid after the due date, the DEP did not receive approximately \$14,600 in interest and penalties.

Recommendation: We recommend that the DEP comply with W. Va. Code §22-19-4 and charge interest and late fee penalties for past due invoices.

Spending Unit's
Response: *DEP agrees with this finding.*

Finding 19

Overstated Workers Compensation Premiums

Condition:

We noted the DEP paid BrickStreet approximately \$11,745 in excess premiums during Fiscal Year 2009 due to employees being misclassified per the National Council on Compensation Insurance (NCCI) Classification Codes and Scopes@ Manual. The schedule below shows the differences between the Actual Payroll per Workers Comp and our audited payroll.

NCCI Code	Classification	Rate	Actual Payroll	Premium	Audited Payroll	Audited Premium	Overpaid / (Underpaid)
4511	Analytical Chemist	0.70	\$390,699.00	\$2,734.89	\$333,613.27	\$2,335.29	\$399.60
7380	Drivers	4.55			\$54,960.00	\$2,502.88	(\$2,502.88)
8601	Engineer or Architect - Consulting	0.81	\$6,481,356.00	\$52,498.98	\$6,644,543.43	\$53,820.80	(\$1,321.82)
8803	Auditor, Accountant or Factory Cost or Office	0.11	\$51,109.00	\$56.22	\$0.00	\$0.00	\$56.22
8810	Clerical Office employees NOC	0.27	\$14,309,269.17	\$38,635.03	\$15,054,866.55	\$40,648.14	(\$2,013.11)
8820	Attorneys	0.23			\$0.00	\$0.00	\$0.00
9015	Building - Operation by Owner, Lessee or Real	2.98	\$0.00	\$0.00	\$31,011.85	\$924.15	(\$924.15)
9410	Municipal, Township, County or State Employee	2.95	\$15,497,200.83	\$457,167.42	\$14,604,499.17	\$430,832.73	\$26,334.69
	Totals		\$36,729,634.00	\$551,092.54	\$36,723,494.27	\$531,063.99	\$20,028.55
	Difference between Actual Payroll and Audited Payroll				\$6,139.73		
	Adjustments to Premiums						
	Experience Modification	64%		(\$198,393.00)		(\$191,183.00)	(\$7,210.00)
	Other WC Premium Debits & Credits	20		(\$70,539.54)		(\$67,976.00)	(\$2,563.54)
	Foreign & Domestic Terrorism Surcharges	2.4%		\$8,816.00		\$8,814.00	\$2.00
	Insurance Commission Regulatory Budget Surcharge	5.5%		\$16,004.00		\$15,439.54	\$564.46
	WV Deficit Reduction Surcharge	9%		\$26,188.00		\$25,264.71	\$923.29
	Total Premium Paid			\$333,168.00		\$321,423.25	\$11,744.75

We noted a difference between our audited Payroll and the Actual Payroll listed on the BrickStreet Audit Report. We were unable to determine a reason for this difference. The Audited Payroll was calculated using reports provided by the EPICS Payroll System which contained the NCCI Code for the employee and adjusted for any exempt payroll per the NCCI Payroll Definition such as Employee Awards, 1/3 of Overtime Pay, and Severance Pay. (The EPICS Report was already adjusted for the taxable employee benefit for commuting use of state vehicles and any additional adjustments).

The DEP EPICS Report shows employees classified as 8820 – Attorneys. Brickstreet has no payroll in this classification.

According to the DEP Payroll Administrative Services Manager, BrickStreet informed DEP that Donated Leave is also excluded from the Workers Compensation Reportable Wages. However, when we deducted the approximately \$24,000 paid to employees for Donated Leave, the difference between the Total Premium Paid per the BrickStreet Audit and our Audited Premium Paid increased to approximately \$12,177. Also, the difference between the audited Total Payroll and the Actual Payroll on the Brickstreet Audit Report went to approximately \$31,000. Therefore it does not appear BrickStreet is excluding donated leave from their calculation of Reportable Payroll.

Criteria:

National Council on Compensation Insurance, Inc Scopes Manual posted 01 Oct. 2010, states in part:

“4511 . . . Phraseology Analytical Laboratories or Assaying – Including Laboratory, Outside Employees, Collectors of Samples, & Drivers. . . Code 4511 is applicable to those insureds that as a distinct enterprise, specialize in research or analytical problems. As noted in this classifications footnote, Code 4511 is not available for any risk that performs operations described by another classification unless the operations subject to Code 4511 are conducted as a separate and distinct business. Thus, laboratories established for purposes of supporting an entity’s principal business are not classified to Code 4511. . .”

“7380 . . . Phraseology Drivers, Chauffeurs, Messengers, and their Helpers NOC – Commercial. . .Code 7380 is applied to commercial drivers, chauffeurs, messengers, and their helpers provided they are not otherwise classified in the *Basic Manual* . . . The term “drivers” refers to employees who engage in duties on or in connection with vehicles and includes drivers, chauffeurs, messengers, drivers’ helpers, garage employees, stable hands, and employees using bicycles in their operations . . . Code 7380 is applied to messengers or couriers who deliver mail, parcels, or packages by driving or bicycling . . . Messenger and courier deliveries made by foot or public transportation are assigned to the governing class code.”

“8601 . . . Phraseology Architectural or Engineering Firm – Including Sales persons & Drivers . . . Code 8601 is applicable to insured engaged in the architectural or engineering profession as a separate and distinct business . . . Code 8601 is not a standard exception. As such unless specifically indicated in this scope or by *Basic Manual* reference, Code 8601 is not applicable to architects or engineers, licensed or unlicensed, employed by insureds that are not in the architectural or engineering business. Architectural and engineering personnel in support of an entity’s principal business must be separately rated to the governing classification of that business. . .”

“8803 . . . Auditors, Accountant, or Computer System Designers or Programmer – Traveling . . . Code 8803 is applicable to traveling clerical-type employees who augment the staff of risks that provide accounting, auditing, computer programming, or related clerical services for their clients. . . Code 8803 is not applicable to traveling clerical employees of business such as banks, manufacturers, chain stores, restaurants, hotels, gasoline stations, etc., who perform clerical duties at their temporary location. These traveling clerical employees, sometimes referred to “internal auditors”, may travel to various branches and remain at these branches for a period of several days or weeks, auditing or monitoring procedures at these locations. These employees are not classified to Code 8803 because their employers are not in the business of providing auditing or accounting services for others; they are assigned to the appropriate clerical classification.”

“8810 . . .Phraseology Clerical Office Employees NOC. . .Code 8810 is applied to clerical office employees provided they are not otherwise classified in the *Basic Manual*. . .The duties of a clerical office employee include creation or maintenance of financial or other employer records, handling correspondence, computer

composition, technical drafting, and telephone duties. The clerical office classification continues to apply to a qualified clerical office employee who performs a duty outside of a qualified clerical office area when that duty does not involve direct supervision or physical labor and is directly related to that employee's duties in the office. . . ."

"8820 . . .Phraseology Attorney – All employees & clerical, messengers, drivers. . .Code 8820 is all-inclusive as respects employees of attorneys or law offices. The employee exposure is principally inside office work; however, the scope includes outside exposure of trial attorneys and attorneys, paralegals and other employees involved in investigative work. It is not intended to apply to "in-house" attorneys employed by business organizations. . ." (This code was posted 01 Jun 2008)

"9015 . . .Phraseology Buildings – Operation by Owner or Lessee or Real Estate Management Firm: All Other Employees. . .Code 9015 is applicable to buildings operated by owners, lessees or real estate management firms that operate office, apartment, tenement, mercantile or industrial buildings. It encompasses all superintendents, custodial and maintenance operations conducted by an owner or lessee of a building. . . Code 9015 is applicable to building maintenance employees of insureds whose principal business is classified to a Standard Exception classification such as Code 8810 – Clerical."

"9410 . . .Phraseology Municipal, Township, County or State Employee NOC. . .Includes employees engaged in laboratory work, inspectors of the Board of Health, electrical inspectors, building inspectors and similar operations. . .Code 9410 contemplates governmental occupations enumerated in its footnote as well as tax assessors, property appraisers, tax collectors, toll collectors, directors of public works not in direct charge of work and welfare workers. . .the assignment of the above occupations to Code 9410 and other code numbers listed is in no way intended to supersede the General Inclusion rule of the *Basic Manual*. . .Engineers that are independent of other departments or are attached to departments that ordinarily would not contemplate engineers are assigned to Code 9410 or Code 8601, if qualified, per requirements described in Code 8601." (posted 01 Jul 2009)

Cause: According to the Payroll Administrative Services Manager, the differences in the Classifications were from BrickStreet indicating a category to use. Since the categories the BrickStreet auditor indicated they should classify the employee had a lower rate, they did not question BrickStreet.

Effect: The DEP paid approximately \$11,745 in excess workers compensation premiums for Fiscal Year 2009. This is mainly due to employees who were classified as 9410, which should have been classified in another category. Many of these other categories had lower rates than 9410.

Recommendation: We recommend the DEP work with Bricksteet and the Insurance Commission and review all employees' worker's compensation classifications.

Spending Unit's

Response:

DEP disagrees with this finding. DEP has an annual audit by Brick Street, our workers compensation insurance provider that reviews the appropriate classification of DEP employee salaries in order to calculate audited workers compensation premiums. DEP and Brick Street work together to jointly agree on these classifications. The auditors at Brick Street are experts in the NCCI classification and DEP is satisfied that the final audited premiums were correct.

Finding 20**Solid Waste Groundwater Protection Fee Non-compliance**

Condition:

1. The DEP is in noncompliance with Solid Waste Groundwater Protection Fee Procedures. According to Legislative Rule 47-55, this type of Groundwater Protection Fee should be collected using the process outlined in W.Va. Code §22-15-11. The procedure outlined in the Code requires the Tax Department to assess and collect the fee monthly. Instead the DEP uses a report, received every July and January, from the Tax Department, to assess & collect the fee. These reports list all tonnage reported to the Tax Department for the period of January – June and July – December, respectively.

2. The DEP does not attempt to collect unpaid invoices nor do they inform the Tax Department of any unpaid groundwater fees. On average, the DEP bills \$16,000 a year in Solid Waste Groundwater Protection Fees. As of June 30, 2010 there were eight invoices, totaling \$817, uncollected. According to the DEP Accounts Receivable Manager, two of the invoices, totaling \$320, were incorrectly listed on the uncollected report. The other six invoices, totaling \$496, were outstanding as of June 30, 2010 from 236 days to 2,671 days with an average days outstanding of 1,156 days. The landfills also are required to have National Pollutant Discharge Elimination System (NPDES) Permits in addition to the Solid Waste Permit Language in the NPDES Permit requires all groundwater fees be paid prior to the permit being issued/reissued.

3. The DEP is in noncompliance with Solid Waste Groundwater Protection Fee Procedures. According to the rules and regulations, this type of Groundwater Protection Fee should be collected from all operators. The schedule below shows the amount of tonnage reported and related fee assessed by company which was either (not billed) or overbilled by the DEP. Tonnage was rounded to nearest ton and fees were rounded to nearest dollar.

Facility #	Amount of Tonnage Reported either (not billed) or overbilled	Fees (not charged)/ over charged	Reason
1	10,720	\$ 107	A
2	3,874	39	A
3	(38,963)	(390)	E
4	(803)	(8)	A
5	(1,298)	(13)	A
6	30,070	301	A
7	(1,487)	(15)	B
8	2,007	20	D
9	(16,422)	(164)	E
10	(1,268)	(13)	A
11	(3,554)	(36)	A
12	(12,893)	(129)	E
13	6,671	67	A
14	(3,505)	(35)	A
15	18	0	A

<u>Facility #</u>	<u>Amount of Tonnage Reported either (not billed) or overbilled</u>	<u>Fees (not charged)/ over charged</u>	<u>Reason</u>
16	(49,767)	(498)	C
Total	\$(76,600)	\$(767)	
Reasons:			
A	The original tonnage Report from the Tax Department was incorrect. The Tax Department sent a new report, and the report had to be added together with the tonnage from the original report for Aug 2008 being used as July & the Aug 2008 tonnage on the new report being used for Aug.		
B	Facility was not billed due to small dollar amount		
C	Facility was not billed due to instructions from a prior DEP employee to not bill facility		
D	Facility was overcharged based on the Solid Waste Tonnage Reports		
E	Company was not billed because it was not in ERIS at the time of billing		

Criteria:

West Virginia Code §22-15-11 states in part:

“. . . (b) Collection, return, payment and records. -- The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner...

. . . (2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee...”

Legislative Rule Title 47 Series 55 Groundwater Protection Fee Schedule states in part:

3.1. Annual groundwater protection fund fees required -- Any person whose activities may affect groundwater quality or who is required to obtain a permit from any agency shall pay the appropriate groundwater protection fund fees in accordance with the provisions of subsection 3.5 of this rule...”

“3.2.a. All groundwater protection fund fees assessed under this rule shall be paid to the appropriate agency by check, money order or electronic transfer.”

“3.2.b. Agencies receiving the groundwater protection funds shall transfer to the director of the division of environmental protection or his or her duly authorized representative, at such frequency as the director may consider appropriate, all groundwater protection fund fees collected...”

“3.3.a. Each agency's permit shall require that all groundwater protection fund fees be paid in accordance with subsection 3.5 of this rule. The permit shall also contain language stating that failure to remit groundwater protection fund fees shall result in withdrawal or denial of groundwater certification, and subject the person to the penalties outlined in W. Va. Code ' 22-12-10.”

“3.3.a.2 Prior to issuing a permit, each agency shall require that all groundwater protection fund fees be paid following the provisions set forth in subdivision 3.4.a of this rule.”

“3.5.f. Disposal of solid waste in a class A, B, or C landfill – a tipping fee of one cent per ton (\$0.01). These fees will be collected following the procedures outlined in W. Va. Code '22-15-11.”

A legal opinion issued by Legislative Services states in part:

“While the legislative rule does state that the director of the DEP shall notify persons subject to the fees found in the legislative rule of the appropriate rate or actual amount of the fee, and the date the fees are due, subsection 3.5.f specifically states that the fees in that subsection will be collected following the procedures outlined in W. Va. Code §22-15-11. The language of the legislative rule was promulgated by the Division of Environmental Protection to include that the tipping fee found in subsection 3.5.f is to be collected following the procedures found in W. Va. Code §22-15-11, therefore it can be assumed that the DEP actually intended for this language to have meaning and be followed. . . the Tax Department should be collecting the Solid Waste Landfill Groundwater Protection Fee found in 47CSR55 subsection 3.5.f, and transferring the fee monthly to DEP. Further, in response to your second question, according to the procedures outlined in W. Va. Code §22-15-11, the fee should be remitted on or before the fifteenth day of the month next succeeding the month in which the fee accrued, and it should be remitted to the Tax Commissioner. . . While neither the Groundwater Protection Act (W. Va. Code §22-12) nor the Groundwater Protection Act Fee Schedule (47CSR55) provide for specific exemptions from the Groundwater Protection Fee, W. Va. Code §22-12-12 provides that operators may petition an agency (which would include the DEP) to issue a declaratory ruling with the respect to the applicability of any rules promulgated by that agency to the operator. W. Va. Code §29A-4-1 clearly contemplates that documentation is required for the submission, consideration and disposition of any such petitions, and therefore if the DEP did issue a declaratory ruling that the Groundwater Protection Fee did not apply to an operator, there should be documentation of such declaration. . .there is no language in W. Va. Code §22-12 or the legislative rule that allows the DEP to not bill for small dollar amounts.

Cause:

DEP currently bills for the Solid Waste Disposal Groundwater Protection Fee twice a year using reports received from the State Tax Department and collects the fees directly. When billing was originally set up, invoices were designed with the DEP lockbox as the remit to address.

According to DEP, “there are issues with who has access to unpaid information in ERIS. We will work with the Information Technology section to correct this issue. . . not all fees are shown or accessible to the permit writer. . .”

DEP does not invoice some operators due to small dollar amounts or being instructed to not invoice some operators by a former DEP employee when the billings were moved to Accounts Receivable during the last reorganization. Also billings were not done timely for new operators that were not in the ERIS System.

Effect: In addition to being in noncompliance with WV Laws by only billing every six months, the groundwater fees are not being timely billed. Also facilities may be issued permits when they do not meet the requirements for the permit. The limitations of the ERIS system makes the internal controls DEP has in place ineffective and the DEP is not receiving all fees it is entitled.

Recommendation: We recommend the DEP comply with W.Va. Code §22-15-11 by having billing processed and fees collected by the Tax Department instead of DEP directly including all fees regardless of amount. Alternatively, DEP could seek Legislative approval to amend the Groundwater Protection Fee Schedule.

Spending Unit’s Response: *DEP disagrees with this finding. DEP does not have jurisdiction over the State Tax Department. In addition, this would require a statute change to WV Code 22-15-11. DEP will work with their Legal Counsel on how to proceed with this matter.*

Finding 21

Incorrect Reimbursements/Disbursements for Septic Tank Registration Fee Sharing Program

Condition:

1. Incorrect reimbursements for the number of septic tank seals issued
 We tested 9 reimbursements totaling \$38,530 out of 76 reimbursements totaling \$157,760 made to contract counties for the period of July 1, 2005 – June 30, 2009. We noted differences between the actual amount paid to the contract county and the audited amount due based on the number of seals issued the prior calendar year. The schedule below has the results of our test.

<u>County</u>	<u>Doc ID</u>	<u>Date Paid</u>	<u>#of Seals Issued During Year</u>	<u>Revenues Received for Year</u>	<u>Audited Amount to be Reimbursed</u>	<u>Amount Reimbursed per WVFIMS</u>	<u>Difference</u>	
Berkeley	I007447980	7/12/2006	522	\$15,660	\$7,830	\$9,210	\$1,380	
Morgan	I007899831	7/5/2007	315	\$9,450	\$4,725	\$5,340	\$615	
Mineral	I007899854	7/5/2007	129	\$3,870	\$1,935	\$2,280	\$345	
Grant	I007914175	7/16/2007	112	\$3,360	\$1,680	\$1,950	\$270	
Preston	I007899893	7/5/2007	177	\$5,310	\$2,655	\$2,760	\$105	
Morgan	I007447856	7/12/2006	564	\$16,920	\$8,460	\$8,565	\$105	
Total Overpayments								\$2,820
Randolph	I008856399	7/3/2008	60	\$1,800	\$900	\$895	(\$5)	
Monongalia	I007899615	7/5/2007	149	\$4,470	\$2,235	\$2,100	(\$135)	
Berkeley	I007899875	7/5/2007	423	\$12,690	\$6,345	\$5,430	(\$915)	
Total Underpayments								(\$1,055)

2. Seed Monies Incorrectly Disbursed

DEP did not disburse monies based upon the number of septic tank registration seals issued the prior calendar year. There were 11 counties which received “seed monies” during the period of July 1, 2005 through June 30, 2009. These counties received funds totaling \$32,400. We selected all of these transactions for testing. We noted the DEP overpaid 7 counties, totaling \$4,220, based on the list of septic tank registrations provided by DEP. The schedule below shows the results of our test:

County	Fiscal Year of Payment	# of Seals issued prior calendar year	Actual Seed Monies	Audited Seed Monies	Difference
1	2006	181	\$ 5,730.00	\$ 5,430.00	\$ 300.00
2	2006	184	7,050.00	5,520.00	1,530.00
3	2007	69	2,190.00	2,070.00	120.00
4	2008	25	1,000.00	750.00	250.00
5	2008	12	1,250.00	360.00	890.00
6	2009	22	1,000.00	660.00	340.00
7	2009	7	1,000.00	210.00	790.00
Totals		500	\$ 19,220.00	\$ 15,000.00	\$ 4,220.00

Criteria: According to the Agreement between the Department of Environmental Protection and the County Health Departments:

“The **DIVISION**, in recognition of the administration, certification, and other activities of the Recipient, agrees to compensate the Recipient from fees collected by the Recipient and remitted to the Division for deposit into the Groundwater Protection Fund.”

“The **DIVISION**, in recognition of the administration, certification, and other activities of the **Recipient**, agrees to compensate the **Recipient** from fees collected by the **Recipient** and remitted to the **Division** for deposit into the Groundwater Protection Fund. . . Such compensation shall equal 50% of the total fees remitted and be paid each July subject to funds received by the Division for septic tank installations for the preceding calendar year. . . The **DIVISION** agrees to provide initial funding in the amount of ... to the **RECIPIENT** so that the **RECIPIENT** upon receipt of such funding may support the collection of septic tank registration fees and gather data on the installation of such systems. . .”

Sewage System Registration Fee Sharing Program Department of Environmental Protection Division of Water and Waste Management Information Sheet on Sewage System Sharing Program states in part:

“7. The **initial funding** for the county entering in contract with DEP is **based on the number of sewage installation permits that were issued in the preceding calendar year** times the \$30.00 registration fees.” **(Emphasis Added)**

Cause: 1. We were unable to determine a cause for the overpayments/underpayments.

2. According to the Environmental Resources Specialist III, “The septic tank seal seed monies include the amount of septic tank seal registration fees collected the year prior to a county entering into the contract with DEP. The seed monies also include an additional amount that the Groundwater Program Manager had determined would help support the collection of septic tank registration fees and the compiling of data on the tank installations.”

Effect: As a result of reimbursing the county health departments for the incorrect amount of septic tank registration seals and/or providing additional “seed monies”, the DEP is in violation of the agreement with the County Health Department and their own policies over the Sewage System Registration Fee Sharing program. Also, some Health Departments may receive additional funds not earned or may not receive all monies due to them. In addition, the DEP may also be providing county health departments with more funding than is necessary to support the collection of septic tank registration fees and the gathering of data on the installation of septic tanks in that county.

Recommendation: We recommend that DEP fully comply with their agreement with the county health departments by reimbursing Contract Counties for 50% of the fees received. We recommend DEP comply with their Sewage System Registration Fee Sharing Program Information sheet, by providing counties with initial funding equal to the number of

permits issued the preceding calendar year times the registration fee or by revising their written policies over the initial funding for health departments. We also recommend the DEP strengthen internal controls over septic tank reimbursements to ensure contract counties are receiving the proper amounts due for septic tank seal reimbursements by having written procedures for how calculations are to be performed.

Spending Unit's
Response:

DEP disagrees with this finding. DEP was unable to duplicate the errors noted. DEP is reimbursing contracted counties 100% during the first year of the contract and 50% in all subsequent years. The problem may be due to the limitations of the ERIS information system and the inability to get historical information from the ERIS system.

Finding 22**Noncompliance with Dam Safety Rule over collections of fees**

Condition:

The DEP does not attempt to collect unpaid invoices for Non-Coal Dam Certificates. As of June 30, 2010 there were 30 invoices, totaling \$4,025, uncollected. According to the DEP Program Manager 2, nine of the invoices, totaling \$1,675, were incorrectly listed on the uncollected report. Five invoices, totaling \$2,100, were for “restricted certificates” and had no fees due. Another seven invoices had credit balances. Certificate holders were not being billed until the credit balance was exhausted. The remaining nine invoices are outstanding, and have been outstanding anywhere from 11 to 1,800 days.

In addition to the five invoices mentioned above where the DEP waived the fee due to a “restricted certificate”, the DEP also waived fees, either application or annual fees for three of the 35 certificates tested. Our population included a total of 230 certificates. We were unable to locate any law or rule giving DEP the authority to waive either annual or application fees, with the exception of dams constructed by the soil conservation districts.

Criteria:

Legislative Rule Title 47 Series 34 states in part:

“4.1. Certificate Required – A person must obtain a certificate of approval from the Secretary in order to place, construct, enlarge, alter, breach, remove, abandon, or perform major repairs upon any dam in this State that falls within the definition set forth in subsection 2.12. . .”

“ . . . 4.2.a. Certificates of approval may constitute full and final approval of a dam or be issued for alterations or repairs, in which case the certificate may or may not constitute final approval of the dam... 4.2.b. The Secretary will issue or refuse to issue a certificate of approval based upon the following: 4.2.b.1. The receipt of a complete application, including all applicable fees. . .”

“ . . . 5.1.c. A complete application will consist of a completed and signed application form, all applicable fees. . .”

“ . . . 18.2. Annual Registration Fees - Owners of existing dams holding certificates of approval shall be assessed an annual registration fee. . . No fee shall be assessed, however, for dams designed and constructed by the soil conservation service for soil conservation districts. The following annual registration fees apply: 18.2.a. Class 4 dams shall be assessed twenty-five dollars. 18.2.b. Class 3 dams shall be assessed fifty dollars. 18.2.c. Class 2 dams shall be assessed seventy-five dollars 18.2.d. Class 1 dams shall be assessed one hundred dollars. . .”

“ . . . 18.3. Any certificate of approval issued pursuant to W. Va. Code §22-14-7 and this rule is void without notification to the person holding the certificate of approval when the annual registration fee is more than one hundred eighty (180) days past due. Resubmission of an application in accordance with section 5 is required where a certificate has become void due to failure to pay the appropriate annual registration fee within one hundred eighty (180) days of the date due.”

Cause: According to the Dam Safety Program Manager: "If the application fee is not paid, we may proceed with review of the application with pre-review letter to the owner noting the lack of the fee. If not paid by the time of Certificate issuance, we will not issue the Certificate until the fee is paid, but I cannot recall an instance where that had to be done. \$300 maximum fee is not a major issue for people spending an average of \$700,000 for the design and construction work. If the annual registration fee is not paid, Accounts Receivable issues a second notice. If the second notice is not paid, we will expire the Certificate. To renew an expired Certificate, the dam owner has to correct the problem (annual registration fee, inspection report, EAP, maintenance plan, no violations – as we discussed previously), pay a \$300 renewal fee and submit a one page application form (to ensure we have their up to date contact information). So, if the fee is the only issue causing expiration, the dam owner would have to pay \$300 (annual registration fee) + \$300 (renewal fee) = \$600 before we will extend the Certificate."

"If the annual registration fee and renewal fee are not paid, DEP has an option to pursue civil administrative penalties. We have not done so to date, but are considering that option since the Legislature increased the penalty amounts in 2009."

Regarding the waived fees, DEP stated if everything is received plus a new application form, the \$300 renewal fee will not be pursued, in some cases, for unpaid annual fees. Also for two of the certificates, DEP stated these were special reviews and no fee was required and no application for received.

Effect: In addition to being in noncompliance with Legislative Rules, by extending dam certificates without proper collection of fees, DEP is not receiving all fees it is entitled. Also without accurate reports of amounts outstanding, the DEP cannot effectively track amounts due to the DEP.

Recommendation: We recommend that DEP comply with Legislative Rule Title 47 Series 34 by collecting all Dam Certificate Application and Annual Registration Fees. We also recommend the DEP does not waive any application or annual fees unless allowed by state laws. Alternately, the DEP could recommend the Legislature amend the law.

Spending Unit's Response: *DEP disagrees with the finding. DEP does not waive certificate fees as a standard practice. We are aware of one instance where the fee was waived. DEP does pursue collection of unpaid certification fees by issuing a second notice invoice. If a certification fee is not received, a certificate is not issued. DEP continues to work with the ERIS programming staff to produce accurate uncollected reports.*

Finding 23**Report Forms were not Provided or Completed****Condition:**

During our audit of the Stream Partners Grant, we reviewed 25 of the 86 grants awarded during the period of July 1, 2005 – June 30, 2010. We reviewed approximately \$160,500 of the approximately \$341,600 given to grantees. We noted approximately 26% of the grants had either missing or unsigned mid-term or final reports. The schedule below lists the results of our review, as well as the projection of the results over the entire population.

Type of Report	Number Reviewed	Number Missing	Number Unsigned/Dated	Total Reports in Noncompliance	%	Total Population	Projected Reports in Noncompliance
Mid-Term	25	6	2	8	32%	86	28
Final*	25	0	5	5	20%	86	17
Total Reports Reviewed	50	6	7	13	26%	172	45

*There were two final reports which were missing, these reports are included in the finding over the 20% match requirement, which was reported to DEP in the inconsequential items noted memo and not in this finding.

Criteria:

According to Legislative Rule Title 60 Series 4, 9.1 through 9.3 states in part:

“9.1. The grantee must provide a mid-term report, and a final report including a budget indicating how the grant money was spent and all in-kind services, cash contributions, and other grants that constitute the 20% match.”

“9.3. Grantees that do not comply with the reporting requirements shall not be eligible for future funding. The Executive Committee may deny future funding to grantees who do not comply with reporting requirements.”

According to the Stream Partners Grant Policy and Procedures:

“1) Both the mid-term and final report will consist of a completed report form, a ledger sheet, a narrative summary of the projects and activities, and photographic documentation of the funded project. The ledger sheet will include date of payment, check number description of the item/service purchased, the amount paid and the number of the corresponding receipt.”

“2) All financial reports must be signed and dated by an authorized official of the grantee.”

Cause:

According to the Environmental Resources Specialist Supervisor, “Electronic copies were accepted because most volunteers do not have the ability to scan or create electronic signatures.”

“Mid-term report cover sheet – Six organizations did not submit the cover sheets with the grant reports, or did not report at all, it is possible they did not have any activity to report or there was a change in staff or volunteers and some transit was needed within the organization. This is not an acceptable practice and the program staff followed up, but it gets to a point at the end of the grant year when we just

accept the final report. Reporting is one of the criteria for funding on grant applications, so organizations did lose points on the next application review. “

Effect: As a result of missing or incomplete mid-term and final report cover sheets, there is an increased risk of fraud with who is authorized to sign the reports and if funds were spent for the purpose of the grant.

Recommendation: We recommend that the West Virginia Department of Environmental Protection enforce and comply with Legislative Rule Title 60 Series 4 and the Stream Partners Grant Policy and Procedures.

Spending Unit's Response: *DEP agrees with the finding and has put procedures and forms in place to address this issue.*

Finding 24

Leave Used/Accrued and not Deducted From/Added to Leave Balances

Condition:

We reviewed the leave accruals and use of 27 of the 321 employees paid with DWWM Funds for the period of July 1, 2005 – June 30, 2008. Based on changes made by the DEP in 2008 to the controls over the leave system, we increased our test period to include the period of July 1, 2008 through April 30, 2010. We noted the DEP did not deduct 69.75 hours of leave for two of the 27 employees and did not record the accrual of 8 hours for one additional employee. We also noted the unapproved accrual and deduction of leave for two employees totaling one & 45 hours, respectively.

Finally, we noted there were no timesheets for one employee for the months of February through April 2010. We inquired with DEP on June 15, 2010 about why there were no timesheets. After our inquiry the DEP provided us with the employee’s timesheets. The date created on the data in the timesheets was June 15, 2010. There was 41 hours of leave listed on the timesheets which had not been recorded in the SAS System.

Criteria:

W. Va. Code §5A-8-9, states in part:

“The head of each agency shall:

. . . (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities. . . .”

W. Va. Code §12-3-13, states in part:

“Salaries not to be paid until services rendered. . . No money shall be drawn from the Treasury to pay the salary of any office or employee before his services have been rendered.”

Cause:

The Payroll Administrative Services Manager stated a timesheet for two employees was not processed through the leave system from the electronic timekeeping system. Also, a processing error caused the leave data for an additional employee to be entered twice in the SAS leave system. They are currently working on this with the employee to correct the leave balance. The unapproved accrual was due to a typographical error when entering leave into the system.

DEP further stated “we had concerns about the potential for human error in manually entering timesheets from the time system to the leave system prior to 2008.”

Regarding the employee who did not have timesheets the DEP stated the employee was under considerable pressure from the Program Office to develop

new protocols to meet EPA demands. The employee has subsequently caught up the timesheets.

Effect: As a result of employee leave not being properly recorded, employees' leave balance would be overstated. Also, for an employee who resigned with overstated balances the employee received approximately \$674 in additional pay.

Recommendation: We recommend that all employee leave be entered into the system and verified against timesheets at the end of the month. We recommend the DEP comply with W. Va. Code §5A-8-9 and §12-3-13 and maintain adequate documentation to support payroll transactions.

Spending Unit's Response: *DEP agrees with the finding. This data is now processed electronically to prevent any discrepancies.*

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER AND WASTE MANAGEMENT

**SUPPLEMENTAL INFORMATION
FUND LISTING**

GENERAL REVENUE FUND

0273 General Administration Fund

General revenue funds for DEP administration.

SPECIAL REVENUE FUNDS

3023 Hazardous Waste Management Fee Fund

Other collections, fees, licenses, income & investment earning to provide state funds for responding to hazardous waste emergencies.

3024 Air Pollution Education and Environment Fund

Fees, collections and other income to provide assurance of compliance with Air Pollution Control and Federal Clean Air Act

3206 Dam Safety Fund

Application and registration fees, interest or surcharge and civil penalties for reviews, inspections and remedial actions to enforce

3217 Leaking Underground Storage Tank Response Fund

Annual fees and interest to assure adequate response to leaking underground tanks

3220 Groundwater Protection Fund

Groundwater protection fees & interest to administer & enforce provision of groundwater protection act.

3222 Groundwater Remediation Fund

Groundwater remediation fees not to exceed \$250,000 in two year period, civil penalties & interest for clean-up and remedial action resulting from contamination of groundwater or related environment.

3255 Performance Bond Monongalia County Landfill Fund

Performance bond or letter of credit held to meet requirements of law in relation to landfill laws of the state

3301 Operating Permit Fees Fund

Sales and surface mining and prospecting permit fees for operating and inspection expenses

3303 Performance Bond Fund

Cash, collateral securities or certificates & interest received to insure faithful compliance with laws

3310 Nonpoint Source Program Fund

Federal funds for water quality planning and management

3312 Special Reclamation Water Quality Fund

Coal fees from fund 3321, land sale & gas royalties for water quality ground improvements not to exceed 25% for clean-up and remedial action resulting from contamination of groundwater or related environment

3314 Performance Bond Investments Clearing Fund

Cash or collateral securities received in lieu of corporate surety from well operators conditioned on full compliance with all laws & regulations

3317 Special Reclamation Administration Fund

Transfers from fund 3321 for reclamation administration not to exceed 10% of the total annual assets of fund 3321

3321 Special Reclamation Trust Fund

Bond forfeitures, fines, investment income & special reclamation tax from fund 7057 for reclamation of lands subjected to surface mining operations

3322 Oil and Gas Reclamation Trust Fund

Special reclamation fees, civil penalties bond forfeitures recovery costs from preventing waste of gas to be used to plug all abandoned or improperly plugged wells

3323 Oil and Gas Operating Permits Fund

Reclamation & UIC permit fees for processing applications in relation to drilling oil & gas wells for carrying out provisions of Chapter 22

3324 Mines and Minerals Operations Fund

2 cents per ton coal tax from fund 7057 & interest to carry out statutory duties relating to the enforcement of environmental regulatory programs for coal industry

3325 Underground Storage Tank Administrative Fund

Registration fee, penalties, forfeitures & interest to defray costs of administration

3326 Hazardous Waste Management HG 1479 Fund

Hazardous waste permit fees for hazardous waste management throughout the state

3327 Water Quality Management Fund

Water pollution control permit fees, donations, fines and penalties to review applications & activities

3328 Closure Cost Assistance Fund

Water disposal fees from 3332, sales & interest to provide assistance for the closure of landfills which are to cease operations by closure deadlines

3329 Water Pollution Control Revolving Fund

Federal and state funds & interest to administer fund & to make loans to local govts. to finance costs of pollution control projects

3331 Hazardous Waste Emergency & Response Fund

Assessment fees, penalties, interest & transfers from fund 3332 to provide for planning & response to hazardous waste emergencies.

3332 Solid Waste Reclamation & Environmental Response Fund

Waste disposal fees and penalties for reclamation, clean-up & remedial actions due to improper solid waste disposal

3333 Solid Waste Enforcement Fund

Solid waste assessment fee & transfers from Fund 3332 for expenses in dealing with solid waste enforcement.

3336 Air Pollution Control Fund

Permit fees and penalties for operating expenses of air quality control Comm.

3337 Gifts & Donations Fund

Gifts, donations and administrative penalties for the conservation, improvement & development of water resources in the state

3338 Operating Fund – Transportation/Aviation 3218 Underground Storage Tank Insurance Fund

Annual financial responsibility assessment, interest & transfer from fund 2364 to satisfy financial responsibility requirements

3340 Environmental Laboratory Certification Fund

Annual certification fees to monitor laboratories conducting waste & wastewater tests & analyses not to exceed an annual program aggregate of \$150,000.

3342 Water Pollution Revolving Fund – Admin Fee

Transfers from fund 7250 & interest to administer revolving fund

3347 Voluntary Remediation Administration Fund

Collections, fees and other income to administer and monitor the Voluntary Remediation Fund

3349 Stream Restoration Fund

Fees, collections, other income & investment earning to ensure surface mine operations will not affect the state's waters or wetlands where wildlife habitat exists

3484 Highway Litter Control Program

Fees, collections & other income to provide funds for the WV Adopt-A-highway litter clean up

3486 Litter Control Fund

Fees, collections & other income to assist in costs of collecting roadside litter.

3487 Recycling Assistance Fund

Fees, collections & other income to administer grants to county and local governments to establish recycling programs

3490 Mountain Top Removal

Fees, collections, other income to enforce the blasting laws & protect the property & citizens of WV

3494 Quarry Inspection and Enforcement Fund

Other collections, fees, licenses & interest income to Administer the Quarry Inspection & Enforcement Fund

FEDERAL FUNDS

8708 Consolidated Federal Funds General Administration Fund

Federal funds and interest income to administer and develop energy resources in West Virginia

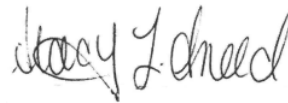
8796 Acid Mine Drainage Abatement & Treatment Fund

Federal funds, investment earnings and interest for acid mine drainage abatement, treatment plans and for administrative and personnel expenses associated with the program

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 12th day of July 2011.



Stacy L. Sneed, CPA, CICA, Director

Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Department of Environmental Protection; Governor; Attorney General; and State Auditor.