

**State of New Jersey
Office of the State Comptroller**



***DEPARTMENT OF ENVIRONMENTAL PROTECTION
A PERFORMANCE AUDIT OF
CONTROLS OVER REVENUE AT SELECTED
STATE PARKS***

**PHILIP JAMES DEGNAN
State Comptroller**

June 26, 2019

TABLE OF CONTENTS

BACKGROUND	1
AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY...	3
SUMMARY OF AUDIT RESULTS	5
AUDIT FINDINGS AND RECOMMENDATIONS	7
Lease and Concession Agreements.....	7
Cash Receipts and Deposit Practices	15
REPORTING REQUIREMENTS	18
AUDITEE RESPONSE	Appendix A

BACKGROUND

Since its establishment in 1970, one of the core missions of the New Jersey Department of Environmental Protection (DEP or Department) has been to protect the state's land and natural resources. In furtherance of that mission, DEP is responsible for the preservation, management, and stewardship of New Jersey's natural, historic, cultural, and recreational resources. Consistent with those responsibilities, DEP maintains and operates 29 parks, 11 forests, 5 recreational areas, and 5 marinas. Generally, DEP collects various fees from visitors to these areas including fees for entry, parking, and some activities.

In 2014, DEP had in effect approximately 320 lease and concession agreements on various DEP-managed properties including park facilities, historic sites, farmland, and golf courses. DEP entered into many of these agreements with local government units or private businesses to operate concession stands and various recreational or sporting activities. DEP also leased several residential properties under its control to private parties.

Prior audits have identified weaknesses in DEP's administration of its lease agreements. In 2008, legislation mandated that DEP "conduct a re-appraisal of the rents and fees charged for all residences and other buildings and structures to ensure they reflect current fair market values and will continue to do so." DEP created the State Land Lease Valuation Panel (Panel) to evaluate the leasing programs within the state and to develop an improved valuation process.

In August 2011, the Panel issued its report and set forth recommendations to improve DEP's leasing process. The report noted that many leases were expired and the rental values for the leases were outdated and undervalued. While the report recognized that tenants remained on properties legally as "holdover" tenants, the report found that the rental values were less than the current market values. The report also found that DEP had not implemented an efficient method for tracking rental payments such as an automated billing system.

In 2011, as a result of the Panel's recommendations, DEP officials announced new guidelines to ensure a "fairer, simpler and consistent [leasing] process" to "ensur[e] the State is fairly compensated" for the use of its property. These guidelines – which were to be implemented immediately – required DEP to:

- a. Conduct appraisals of State land for the purpose of valuing private use leases;
- b. Include in its lease agreements, especially those with renewal clauses, an annual inflation adjustment based on the Consumer Price Index (CPI) of at least 2.5 percent;
- c. Centrally coordinate the management of billings and collections; and
- d. Discontinue utilizing lease agreements with undefined terms (*e.g.*, "in perpetuity" leases).

Despite DEP's initiative in 2011 to revamp its lease management and administration, OSC found that DEP had not implemented the new guidelines for the lease and concessions agreements included in our review.

In August 2012, DEP dissolved its Internal Audit Unit that previously reviewed various programs within the department. In September 2014, DEP hired a comptroller to oversee all fiscal and operational units, including the newly reinstated Internal Audit Unit, whose responsibilities include monitoring DEP operations to ensure compliance with department policies.

AUDIT OBJECTIVE, SCOPE, AND METHODOLOGY

The objectives of our audit were to assess the effectiveness of DEP's management and administration of lease and concession agreements at Island Beach State Park (IBSP), Cheesquake State Park (CSP), and Liberty State Park (LSP). We also evaluated the controls in place at the state parks and DEP management's oversight and monitoring of cash receipts and deposit procedures at CSP and IBSP.¹ Our audit covered operational activities and financial transactions for the period from July 1, 2012 to December 31, 2014. In some cases, the relevant lease and concession agreements we reviewed were executed prior to July 2012.

This audit was performed pursuant to the State Comptroller's authority as set forth in *N.J.S.A. 52:15C-1 et seq.* We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. As part of our audit procedures, we reviewed applicable state regulations, DEP policies and procedures, lease and concession agreements, and financial records and supporting documentation for cash receipts and deposit activities. We also interviewed DEP personnel to obtain an understanding of their job responsibilities, overall operations, and the internal controls.

We judgmentally selected cash receipts and deposit transactions at CSP and IBSP and reviewed all lease and concession agreements in effect at the three state parks in 2014. Our samples and testing of those transactions were designed to provide conclusions about internal controls and compliance with DEP policies and procedures. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Because we used a non-statistical sampling approach in the testing

¹ During the audit period, Liberty State Park did not collect cash and therefore was excluded from our cash receipts and deposit procedures activity testing.

of cash receipts and deposit transactions, the results of our testing cannot be projected over the entire population.

SUMMARY OF AUDIT RESULTS

Key internal controls were insufficient for the management and administration of the lease and concession agreements. The audit also found weaknesses in DEP's internal controls for cash receipts and deposit operations. Further, DEP management failed to provide adequate monitoring and oversight for lease and concession administration and cash receipts and deposit operations.

Specifically, our audit found that DEP:

- a. Lacks an internal control system and a formal process for monitoring lease payments resulting in uncollected and late payments, as well as, payments remitted in incorrect amounts. These deficiencies, along with the lack of DEP managements' monitoring and oversight, contributed to DEP's failure to collect lease payments, assess late fees, and enforce annual escalation adjustments resulting in lost revenue of approximately \$343,000.
- b. Improperly managed lease and concession agreements that resulted in inconsistent lease terms, lease provisions that have not been enforced, outdated lease terms, lease and concession rates that were undervalued and not based on fair market value, and tenant security deposit accounts that are unaccounted for and not properly inventoried.
- c. State park staff failed to follow the policies and procedures for cash receipts and deposit activities and DEP management's lack of oversight and monitoring failed to adequately protect cash receipts creating a risk of loss and/or theft.

Through development of stronger policies and procedures, DEP would be better positioned to improve its monitoring and oversight, provide greater efficiencies in operational practices, and achieve compliance with state statutes and regulations, and internal policies and procedures.

OSC makes nine recommendations to enhance DEP's monitoring and oversight of lease and concession administration and cash receipts and deposit activities at state parks.

AUDIT FINDINGS AND RECOMMENDATIONS

Lease and Concession Agreements

Insufficient internal controls over lease management and administration, and inadequate monitoring and oversight has resulted in uncollected lease payments, outdated lease terms, noncompliance with lease terms, and lease rates that are undervalued and do not reflect fair market value rental rates resulting in lost revenue.

It is axiomatic that DEP management is responsible for the establishment of internal controls that provide reasonable assurance that transactions are executed and recorded in accordance with its authorization. DEP management is also responsible for effective monitoring and oversight of lease activities to ensure that policies and procedures are complied with and that staff are performing their functions as expected.

Our audit found that DEP had not established internal controls for its lease management and administration activities. Our assessment of DEP's internal controls revealed a lack of policies and procedures for lease management and administration activities, outdated policies and procedures regarding lease processing, some of which had not been updated since they were adopted in 2006, and staff who were not aware of and/or not following DEP policies and procedures. OSC found that DEP policies and procedures were inadequate and were not specific to the unique decentralized lease and concession operations. In addition, the policies and procedures did not address all critical aspects of lease administration and management, including, but not limited to: timely review and renewal of existing leases, the use of consistent lease terms and conditions in all similar leases, payment processing, late fee assessments, market value analysis of the properties, and annual escalation rate adjustments.

Not only did DEP management fail to establish internal controls for lease management and administration, they also failed to establish effective monitoring and oversight of such operations. These collective failures resulted in improperly managed lease and concession agreements that cost DEP approximately \$343,000 of lost revenue.

Our audit included a review of the 23 lease and concession agreements in effect at each of the three parks during our audit period. CSP had six lease agreements and one concession agreement, IBSP had seven lease agreements and one concession agreement, and LSP had four lease agreements and four concession agreements. Our review found significant deficiencies with all 13 of the leases reviewed at CSP and IBSP, and areas for improvement in the monitoring of the concession agreements. Our review of the lease and concession agreements at LSP did not identify any deficiencies but management oversight is needed to ensure effective lease and concession operations.

DEP did not have a system in place to monitor or ensure compliance with all provisions of the lease and concession agreements. Specifically, our audit found that DEP was unaware of uncollected and late lease payments and did not: (1) assess or pursue late payment penalties, (2) formally review or renew expiring leases, (3) ensure current lease parties or actual payment terms were memorialized in the formal lease, (4) enforce annual lease rate escalation adjustments, (5) ensure the use of consistent lease terms in all similar agreements, or (6) set lease rates consistent with fair market value rates.

The detailed findings of our audit are presented below.

Inadequate Lease Management and Administration

DEP staff failed to adequately manage and administer lease and concession agreements, monitor lease payments, ensure the tenant's compliance with the lease and concession terms, properly amend the lease agreements, or enforce lease agreement provisions for late fees and annual rental escalation adjustments.

Uncollected and Late Payments

DEP did not have a system to monitor or track lease payments and did not reconcile or resolve lease payment discrepancies. Policies and procedures regarding lease payment processing are nonexistent. Our review of lease payments identified several tenants with late payments. The most egregious situations of uncollected lease payments were two tenants at CSP. DEP was unaware of one tenant (Tenant A) who had not paid

rent for two years and another tenant (Tenant B) who was more than seven months late on payments for three separate leases.

Tenant A

OSC noted that lease payments were not received from Tenant A as of October 1, 2012. Upon notification of the missing payments, DEP advised Tenant A in a letter dated September 10, 2014, that the last rent payment had been received in September 2012 and requested the tenant to submit evidence of payments for October 2012 through September 2014 or remit the \$29,424 outstanding rent. The tenant advised DEP in its response dated September 15, 2014 that it had suffered significant damage from Hurricane Irene in 2011 and from Superstorm Sandy.² As of April 2018, the tenant has not submitted evidence of the payments or remitted the outstanding lease payments.

DEP told OSC that they were in discussion with the New Jersey Attorney General's Office regarding appropriate legal action to seek payment and/or initiate eviction proceedings. In 2018, DEP told OSC that no formal action had yet been taken.

Tenant B

As a result of our finding regarding Tenant A, DEP identified another tenant who had not remitted monthly lease payments, for three separate leases, between April and October 2014. DEP notified Tenant B in a letter dated October 22, 2014, of the outstanding lease payments and upcoming November 2014 rent that was due. The total outstanding rent and late penalties amounted to about \$39,000. Tenant B made partial payments and ultimately remitted the past due balance including all late fee penalties that had been assessed.

² OSC reminded DEP officials that Superstorm Sandy struck New Jersey on October 29, 2012, after the October 1, 2012 due date for the October monthly lease payment. We also reminded DEP that Tenant A continued to make timely lease payments for the thirteen-month period beginning in September 2011 after Hurricane Irene had already struck the state, leaving doubt as to the damage suffered.

Lease Terms Modifications Were Not Authorized

DEP did not have a formal lease that memorialized the actual payment arrangements or current tenants for two leases at CSP.

One lease with Tenant B for office space was signed in April 2003 and required a monthly lease payment of \$1,300. However, the monthly payment records for Fiscal Years (FY) 2013 and 2014 reflect actual monthly payment receipts of \$550, a monthly rent reduction of \$750, totaling \$18,000 of lost revenue for FYs 2013 and 2014. DEP did not have any formal lease amendment reflecting the revised monthly lease rate. DEP corrected the discrepancy, and as of July 2015, DEP lease payment records reflect monthly receipts of \$1,300.

Another lease initially signed in 1983 for residential property included a monthly lease payment of \$450. However, the lease payment receipts reflected payments in the amount of \$562 for as far back as 2011. DEP staff did not have any supporting documentation or formal lease amendment reflecting when or why the monthly lease amount had changed. In addition, DEP did not have a signed, formal lease with the current tenant who had “assumed” the lease from a relative.

Lease Review and Renewal

Of the 23 lease and concession agreements included in our review, all leases for properties at CSP and IBSP have expired. DEP had not reviewed or formally renewed these leases and had simply allowed the current tenants to remain as “holdover tenants” with the existing lease terms as initially executed. In most cases, the leases were initially executed many years ago, one as far back as 1983. In addition, OSC found that three of the six lease agreements at CSP were not signed by all of the parties.

Improperly Managed Leases

The audit found that the leases at CSP and IBSP were outdated and did not include consistent lease terms for similar property types. DEP’s failure to periodically review the lease agreements resulted in a number of concerns and the potential for legal

complications should a dispute arise amongst the parties. In addition, the lease agreements did not use consistent lease terms, used potentially outdated lease terms that had not been subject to a formal legal review to ensure that the state's interests are adequately protected, and failed to ensure that the properties had been appraised and tenants were paying fair market value rent.

DEP leased office space using a special use permit (permit) instead of a formal lease agreement. Tenant B occupies office space through the use of a permit that allowed the six-month use of space commencing January 1, 2010. The permit specifies that a formal commercial office space lease is to be executed. The permit is not signed by either party and specifies that it will be renewed only upon acceptance by the Department. DEP did not provide evidence that it accepted a renewal term. As of April 2018, Tenant B occupied the space since the permit expired on June 30, 2010, more than eight years after the initial term expired. DEP did not provide any explanation why a commercial office space lease was not executed or why the permit was appropriate under the circumstances. Furthermore, OSC's audit disclosed that the terms and conditions of the permit are less restrictive than the lease agreements for office space executed with the other tenants and may not constitute an appropriate use of a permit or be in the best interests of the state.

Leases for similar properties did not include consistent terms or use the same lease template. For example, one lease at CSP, executed in 1999 for an indefinite term, used a boiler plate lease template with several terms crossed out, including the annual rental escalation adjustment provision. Of the 13 leases at CSP and IBSP, only 3 lease agreements at CSP (2 residential and 1 commercial office space) required security deposits.

Not only did DEP fail to require security deposits from all tenants, they were not able to account for those security deposits referenced in the three leases with CSP tenants. Absent any information on the security deposit accounts, OSC is not able to verify if DEP complied with state regulations regarding its obligations as a landlord and its handling of the security deposit accounts.

Lease Terms Not Enforced

Annual Escalation Adjustments and Late Fees

Two of the six leases at CSP include provisions for annual rate adjustment based on the CPI. However, DEP did not adjust the lease rates. Utilizing the annual CPI for each year dating back to the original lease term, OSC calculates the lost revenue for additional rent attributed to escalation for all CSP leases to be approximately \$261,000.

At IBSP, OSC found that DEP did not use the CPI in determining the annual rental rate increases each year contrary to the lease terms. In addition, the audit found that the actual escalation rates used were not consistently applied to every lease each year. Further, although the new lease guidelines announced in 2011 prescribed the use of an annual 2.5 percent inflation adjustment, in 2012 DEP adjusted the IBSP leases by 3.0 percent when the CPI was 2.1 percent, in 2013 lease rates were adjusted 2 percent when the CPI was 1.5 percent, and rates were adjusted 1.5 percent in 2014 when the CPI was 1.6 percent. DEP offered no explanation why they failed to use the actual CPI or the 2.5 percent annual escalation rate specified in the 2011 guidelines.

The lease agreements do not consistently include late fee penalty provisions nor did DEP consistently assess late fee penalties when lease payments were received late, despite having such provisions in the lease agreements. Tenant A, discussed earlier, who failed to submit the monthly rent payments for two years totaling \$29,424, would have incurred \$34,256 in late fees through December 2017 had the DEP reviewed and renewed the lease in a timely manner and included the late fee penalty provision - a standard lease term for residential leases – in the renewal lease.

Lease Term Compliance

DEP did not adequately monitor lease agreements to ensure that all provisions were satisfactorily completed. DEP did not provide evidence of: (1) a current, valid insurance liability certificate for any of the six CSP lease agreements; (2) triannual concessionaire evaluations for the CSP vendor, and (3) annual reports from the IBSP concessionaire, as required.

Recommendations

1. Develop and implement policies and procedures for lease management and administration. At a minimum, ensure that the policies and procedures address the issues raised in this report including lease review/renewal, the use of standard lease terms that are consistently used in all similar leases, payment monitoring, late fee penalty assessment, and annual rate escalation adjustments. All staff roles and responsibilities should be defined and the Department should consider centralized and decentralized operations for effective and efficient operations. Once adopted, training should be provided to all appropriate staff.
2. Establish appropriate management oversight and monitoring of lease and concession agreements.
3. Implement a lease management system that monitors compliance with the lease terms and conditions. At a minimum, the system should provide timely identification and notification of issues so the Department can take appropriate action for all instances of noncompliance, including, but not limited to the issues identified in this report: notification of nonpayment or late rent, assessment and collection of late payment penalties, receipt and retention of insurance certificates, completion of concessionaire evaluations, and receipt of concessionaire annual reports.
4. Continue discussions with the New Jersey Attorney General's Office and take appropriate action to recover the outstanding \$29,424 rent from Tenant A, including any interest that the state may be entitled to.
5. In consultation with legal counsel, assess the merits of conducting property appraisals and the actions required to adjust leases to fair market value, with appropriate consideration of those leases not yet expired and those in holdover status. As appropriate, devise a plan to adjust the rental rates and to ensure that all future leases are monitored for changes in fair market value.
6. Evaluate all current leases and renew those leases deemed in the state's best interest, using a lease template with consistent terms for all similar properties. Ensure all

agreements include a defined term and are signed by all parties to the lease. All newly executed leases should, at a minimum, include appropriate lease terms for annual escalation adjustments, late fee penalties, security deposits, and proof of insurance.

7. Investigate the status of security deposit accounts and develop policies and procedures to ensure compliance with all relevant laws.

Cash Receipts and Deposit Practices

Key internal controls for cash receipts and deposit operations were lacking. In addition, DEP's monitoring and oversight activities for cash receipts and deposit operations are inadequate and need strengthening to improve compliance with state and DEP policies.

In addition to establishing internal controls, DEP management is ultimately responsible for the daily operations at the state parks under its oversight. Key internal controls for cash receipts and deposit activities were either lacking or in need of improvement to ensure accurate recording of cash transactions. State park staff did not perform all required activities to ensure the accurate and timely processing of cash receipts and deposit activities. OSC found that DEP management failed to adequately monitor and oversee cash receipts and deposit operations to ensure compliance with Department of Treasury (Treasury), Office of Management and Budget (OMB) Circular Letter, and DEP policies and procedures.

The state policy regarding the deposit and handling of funds for state agencies applicable for the audit period is outlined in the OMB Circular Letter 12-02. The Circular Letter provides guidance for deposit procedures and timing of deposits to financial institutions. DEP also has internal policies and procedures for cash receipts and deposit operations that outline the specific responsibilities for park staff including the reconciliation procedures, supporting documentation requirements, and monitoring activities.

At both CSP and IBSP, park staff did not verify the actual daily cash receipt records with DEP's financial reporting system. In addition, DEP management officials did not reconcile the daily cash receipts recorded in the DEP financial reporting system with the Treasury data as required by DEP policy. Further, DEP management did not provide state park staff the summary of actual deposit data recorded in the official Treasury financial system for appropriate monitoring and confirmation of reported information.

In addition, the audit testing of cash receipts and deposit transactions found:

- a) Voided transactions were not entered in the cash register and approved by the cashier's supervisor as required by DEP policy at IBSP. Park supervisors at CSP properly entered and approved the voided transactions in the cash register but did not always include an explanation or reason for the void in the daily reporting records.
- b) Daily summary reports of cash register activity for IBSP and CSP did not include an explanation for the cash register differences (shortages and overages) or evidence of management review.
- c) Park supervisors at CSP did not sign the daily financial summary reports required by DEP policy.
- d) CSP park management did not track the cashiers assigned to the main office register for each shift.
- e) Cashiers at IBSP printed opening and closing register tapes themselves, despite the DEP policy that requires supervisory staff print the tapes.
- f) Park staff at CSP and IBSP did not deposit all cash receipts on the same day as collected as required by OMB procedures.
- g) IBSP staff did not submit the required reports to Treasury in the timeframe specified in the DEP policy.

At the time of our audit, DEP's policy required cash deposits be completed at the financial institution within 24 hours, which was not consistent with OMB Circular Letter requirements that cash be deposited on the same day. In June 2016, at the request of DEP, Treasury provided an exemption of the OMB cash deposit requirement to DEP. OMB has granted DEP 72 hours to complete the deposits subject to monitoring and oversight of their management staff. As a result of the exemption, in 2016, DEP revised its policy to reflect the 72 hour time limit.

Recommendations

8. Review and revise policies and procedures for cash receipts and deposit handling operations that ensure the issues noted in this report are addressed. Provide appropriate training to park management staff to educate and improve compliance with the recording of cash receipts, recording of transactions, including the appropriate handling of voided transactions, the proper documentation requirements and reporting submission requirements, transportation of deposits, and reconciliation of deposits as reported to the Department of Treasury.

9. Implement oversight and monitoring activities to improve compliance with cash receipts and deposit activities required by OMB Circular Letter and DEP Policy.

REPORTING REQUIREMENTS

We provided a draft copy of this report to DEP officials for their review and comment. DEP's comments were considered in preparing our final report and are attached as Appendix A.

Generally, DEP agreed with the audit findings and conclusions and its response indicated it had either already taken steps, or planned to take steps, to implement OSC's recommendations. However, with regard to DEP's response to Recommendation 5, OSC does not agree that our audit asserted that all rent calculations should have followed the Panel's report. DEP's response states that it cannot impose the findings of the Panel report, including adjusting the annual rent or assessing penalties and fines, on existing agreements or those in under holdover status. DEP asserts that such adjustments would be viewed as a unilateral policy change and could be challenged as arbitrary, capricious, and unreasonable. While OSC agrees generally with DEP and acknowledges that the parties of the lease are typically bound by the terms and conditions of the executed lease agreements, DEP has not provided the legal authority for its position. As expressed in our recommendation, OSC reminds DEP that it may have certain legal rights and should obtain legal counsel regarding the setting of the annual rent and assessment of fees and penalties under the unique circumstances presented by each lease agreement.

As our audit noted, many of the leases included in our scope were in holdover status and our recommendation remains for DEP to consult legal counsel and assess the merits of conducting property appraisals and the actions required to adjust current leases to fair market value, as appropriate.

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement and in accordance with *N.J.A.C. 17:44-2.8(a)*, following the distribution of the final audit report, DEP shall report to the Office of the State Comptroller within 90 days stating the corrective action taken or underway to implement the recommendations contained in the report and, if not

implemented, the reason therefore. This Office will review the implementation of the corrective action plan.

On behalf of OSC, we thank DEP's management and staff for the courtesies and cooperation extended to our auditors during this engagement.



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May 9, 2019

Ms. Yvonne Tierney
Audit Director
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**RE: Department of Environmental Protection, Controls Over Revenue at Selected Parks and Marinas
Audit Report**

Dear Ms. Tierney:

Thank you for the opportunity to review and respond to the Office of the State Comptroller's (OSC) audit regarding the New Jersey Department of Environmental Protection (DEP) controls over revenue at selected parks and marinas. The Department has carefully reviewed the audit report and is pleased to note that some of the recommended changes have already been made and that other recommended changes are currently being initiated.

The DEP is proud of our parks and the staff who work tirelessly to ensure they run smoothly to provide a positive, engaging and enriching experience for the residents of New Jersey and beyond. Island Beach State Park, Cheesequake State Park and Liberty State Park are three of our largest and busiest parks. It is paramount to the mission of the DEP that these parks are run effectively, and we take their management very seriously.

We acknowledge that there are specific areas of oversight regarding lease management and the collection of revenue at the selected parks that can be strengthened and feel confident that we can quickly improve our performance in these areas through measures that have already been implemented or are now in progress.

Please see the following responses to the specific recommendations outlined in the audit report:

Lease and Concession Agreements

1. "Develop and implement policies and procedures for lease management and administration. At a minimum, ensure that the policies and procedures address the issues raised in this report including lease review/renewal, the use of standard lease terms that are consistently used in all similar leases, payment monitoring, late fee penalty assessment, and annual rate escalation adjustments. All staff roles and responsibilities should be defined, and the Department should

consider centralized and decentralized operations for effective and efficient operations. Once adopted, training should be provided to all appropriate staff.”

Response 1: *DEP’s Office of Leases & Concessions will develop policies and procedures that will address the recommendations of this audit report and implementation of the lease, license and concession agreement database.*

2. “Establish appropriate management oversight and monitoring of lease and concession agreements.”
3. “Implement a lease management system that monitors compliance with the lease terms and conditions. At a minimum, the system should provide timely identification and notification of issues, so the Department can take appropriate action for all instances of noncompliance, including, but not limited to the issues identified in this report: notification of nonpayment or late rent, assessment and collection of late payment penalties, receipt and retention of insurance certificates, completion of concessionaire evaluations, and receipt of concessionaire annual reports.”

Response 2 and 3: *In late 2014, the Office of Leases & Concessions with funding through the DEP’s Division of Information Technology and a contract with CGI Technologies and Solutions Inc. developed a database to create a reliable, timely system to track lease, license and concession agreement data categories, to provide enhanced oversight, reliable monitoring of payments, reporting, insurance certificates and other deliverables. In the first quarter of 2019, the database went live as a component of DEP’s New Jersey Environmental Management System (NJEMS) database. The most recent hire in the Office of Leases & Concessions has experience with the NJEMS database and will start the process of entering information into the management system.*

4. “Continue discussions with the New Jersey Attorney General’s Office and take appropriate action to recover the outstanding \$29,424 rent from Tenant A, including any interest that the state may be entitled to.”

Response 4: *The Office of Leases & Concessions had continued discussions with the New Jersey Attorney General’s Office (AG) which culminated in the AG’s Office providing a formal advice document on the removal of residential tenants of houses on State-owned land at Edison State Park dated June 5, 2018. With respect to Tenant A, the AG’s Office indicated that they “recommend against pursuit of the back-rent due to the time and resources that would need to be expended along with the risk of a counterclaim by the tenants for a reimbursement of post-Superstorm Sandy repairs.” On April 22, 2019, Office of Leases & Concessions took the first step in the eviction process by sending both Tenant A and Tenant B an 18-month Notice to Quit asserting permanent retirement from residential use with no further renewals. After the evictions are complete, the DEP will demolish the residential structures.*

5. “In consultation with legal counsel, assess the merits of conducting property appraisals and the actions required to adjust current leases to fair market value. As appropriate, devise a plan to adjust rental rates in current leases and to ensure that all future leases are monitored for changes in fair market value.”

Response 5: *It is suggested in the audit report that the Office of Leases & Concessions does not follow the report issued by the State Land Lease Valuation Panel in August 2011. All lease agreements generated after that date fully conform to the Panel's report. It is asserted in the audit report that upon adoption of the Panel's report, all rent calculations should have followed that report. However, it is the lease agreement that establishes the terms and conditions agreed upon by both the Landlord and Tenant. Were DEP to change existing lease agreements and those lease agreements in holdover status by means of a unilateral policy change, such an action could be challenged as arbitrary, capricious and unreasonable. Therefore, the Office of Leases & Concessions cannot impose the findings of the Panel report on existing agreements regardless of their status. This reasoning would also extend to the adjustment of annual rent and assessment of penalties and fees. The Office of Leases & Concessions now adjusts rents and assesses penalties in accordance with the terms of the lease agreement in effect.*

6. "Evaluate all current leases and renew those leases deemed in the state's best interest, using a lease template with consistent terms for all similar properties. Ensure all agreements include a defined term and are signed by all parties to the lease. All newly executed leases should, at a minimum, include appropriate lease terms for annual escalation adjustments, late fee penalties, security deposits, and proof of insurance."

Response 6: *The Office of Leases & Concessions use agreement templates (e.g., Lease, License, Concession, Right of Entry) that have consistent terms for similar properties and uses. Terms may not be uniform where agreements have been assumed by the DEP through either acquisition of the property, termination of management agreements such as Preservation Partnership or other action by the Department. Presently, the aforementioned agreements prepared by the Office of Leases & Concessions are reviewed by Department of Environmental Protection and, as appropriate, assigned Deputy Attorneys General from the New Jersey Attorney General's Office.*

7. "Investigate the status of security deposit accounts and develop policies and procedures to ensure compliance with all relevant laws."

Response 7: The DEP was assigned several leases from Edison Township, which received the security deposits and was responsible for the maintenance of the funds in accordance with the State Tenant Statutes. The DEP has not received security deposits from Edison Township or the Tenants. The Department will obtain legal advice regarding the receipt and management of security deposits.

Cash Receipts and Deposit Practices

8. "Review and revise policies and procedures for cash receipts and deposit handling operations that ensure the issues noted in this report are addressed. Provide appropriate training to park management staff to educate and improve compliance with the recording of cash receipts, recording of transactions, including the appropriate handling of voided transactions, the proper documentation requirements and reporting submission requirements, transportation of deposits, and reconciliation of deposits as reported to the Department of Treasury."

9. "Implement oversight and monitoring activities to improve compliance with cash receipts and deposit activities required by OMB Circular Letter and DEP Policy."

Response 8 and 9: The State Park Service is in the process of revising State Park Service Policy and Procedure 1.07 as it relates to monitoring procedures and responsibilities, as all deposits for the State Park Service are recorded by the Department of Treasury.

The State Park Service is also in the process of developing a Revenue, Records and Inventory Policy and Procedure specific to the operations at Island Beach State Park. The new policy will address the lack of permanent staff and provide additional responsibilities to seasonal staff. DEP is currently in the process of adding credit card machines to the toll booths at Island Beach State Park, which will assist with minimizing cash handling and reduce the potential for any discrepancies in revenue reporting.

Park management staff at Island Beach and Cheesequake State Parks have been reminded to provide training to all permanent and seasonal staff in the proper recording of cash receipts, recording of transactions and the appropriate handling of voided transactions and the proper documentation requirements and reporting submission requirements. The Chief of the State Park Police has been notified of the deficiency in making deposits within the required 72-hour time period and has officially notified the appropriate State Park Police Lieutenants of the necessity in ensuring all deposits are made in accordance with State Park Service Policy and Procedure 1.07.

The DEP looks forward to maintaining the positive relationship that it has established with the Office of the State Comptroller so that we can continue to improve our operations throughout the State of New Jersey. Please do not hesitate to contact me in all areas of mutual concern.

Sincerely,



Catherine R. McCabe

cc: Ray Bukowski, Assistant Commissioner, Natural and Historic Resources, DEP
Stephen C. Matis, Comptroller