

**STATE OF WEST VIRGINIA**



**AUDIT REPORT**  
**OF**  
**WEST VIRGINIA DEPARTMENT OF**  
**ENVIRONMENTAL PROTECTION**

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**PERFORMANCE BOND FUND 3303**  
**AS OF DECEMBER 31, 2008**

**EQUIPMENT PURCHASES AND INVENTORY**  
**SPECIAL HANDLING OF PAYMENTS**  
**REGIONAL OFFICE CASH COLLECTIONS**  
**FOR THE PERIOD JULY 1, 2005 - JUNE 30, 2008**

**DIVISION OF WATER AND WASTE MANAGEMENT-**  
**NOTICE OF VIOLATIONS**  
**FOR THE PERIOD JULY 1, 2005 - JUNE 30, 2007**

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**OFFICE OF THE LEGISLATIVE AUDITOR**  
**POST AUDIT DIVISION**

**CAPITOL BUILDING**

**CHARLESTON, WEST VIRGINIA 25305-0610**

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**WEST VIRGINIA LEGISLATURE**  
***Joint Committee on Government and Finance***

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May 15, 2009

The Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we are conducting an ongoing post audit of the West Virginia Department of Environmental Protection's Division of Water and Waste Management for the period July 1, 2005 through June 30, 2007. We are conducting our audit in accordance with auditing standards generally accepted in the United States.

Our fieldwork to date has disclosed certain findings which are detailed in this report; we anticipate more reports will follow. The Department of Environmental Protection'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

SLS/cdo

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**EXECUTIVE SUMMARY**

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**Finding 1      Material Weaknesses in Internal Control Over Cash Performance Bonds**

- **Note: At this time, issues noted in this finding are being researched by our legal staff and this finding is subject to revision based on the lawyer conclusions as to interest, etc.**
- We were unable to audit the cash balance in the Performance Bond Fund 3303 because the Department of Environmental Protection (DEP) does not account for all monies in the fund. The cash balance in this WVFIMS fund and corresponding investment account at December 31, 2008 totaled \$3,311,570.11.
- Interest earned on monies in Fund 3303 is retained in the fund; Interest earned on monies in Fund 3314 is remitted to the Individual/company that submitted the cash performance bond. We believe the interest earnings on cash performance bonds in Fund 3303 are due and owing the individual/company submitting the bond. However, without detailed accounting records, we are unable to determine the amount of interest earnings due and to whom.
- Because the available bond records do not indicate which of the two funds the bonds were deposited into, we performed a “reasonableness” test on the cash balances of both funds by comparing actual cash as of December 31, 2008 to cash recorded on available records provided to us by the DEP, the State Treasurer’s Office (STO), and amounts recorded in WVFIMS. We found \$1,077,003.04 which we could not identify as to the source of the revenue due to lack of records.
- We believe all cash performance bonds should be remitted to the State Treasurer’s Office in accordance with Chapter 12, Article 4, Section 2 of the West Virginia Code.

**Auditor’s Recommendation**

**We recommend the DEP comply with Chapter 5A, Article 9, Section 8, Chapter 12, Article 5, Sections 1 and 2, Chapter 22, Article 6, Section 26 and Chapter 22, Article 3, Section 11 of the West Virginia Code or seek a change in the statute. We further recommend the DEP create records for Funds 3303 that detail the amounts that make-up cash balance in the account and perform the following:**

- i. **Transfer the cash performance bonds to the State Treasurer’s Office for safekeeping and investing.**
- ii. **Remit any interest earnings in Fund 3303 related to cash performance bonds to the individual/company that submitted the bond; and,**
- iii. **Account for any other monies remaining in the funds in a manner consistent with State law.**

*See Pages 12 - 17 For Finding and DEP’s Response*

**Finding 2      Bonds being Retained by DEP**

- **Note: At this time, issues noted in this finding are being researched by our legal staff and this finding is subject to revision based on the lawyer conclusions as to submission of surety bonds, etc.**
- As of December 31, 2008, the Division of Mining and Reclamation has not remitted bonding instruments (Letters of Credit, Surety Bonds, and Self Bonds), totaling approximately \$800,000,000.00 to the State Treasurer's Office for safekeeping in noncompliance with State Code. We also observed \$600,000 of bonding instruments (cashier's checks, official checks, company checks, certified checks, and certificate of deposits) being held in the Welch and Oak Hill Regional Offices. The bonding instruments observed in the Welch Regional Office were being maintained in an unlocked desk drawer. We believe internal controls need strengthened in regional offices to safeguard bonds from unauthorized use or disposition.

**Auditor's Recommendation**

**We recommend that DEP transfer and deliver securities to the State Treasurer's Office for safekeeping in compliance with Chapter 12, Article 5, Section 2 of the West Virginia Code.**

*See Pages 18 and 19 For Finding and DEP's Response*

**Finding 3      Lack of Effective System of Internal Control Over Notice of Violations**

- The Division of Water and Waste Management (DWWM) Office of Environmental Enforcement does not have an effective system of internal controls in place to account for the number of Notice of Violations (NOV) issued by inspectors because the forms are not pre-numbered or no other type of effective numbering system has been implemented that would alert management if a form is missing. Generally, a NOV is the first stage of the violation process and may result in fines and penalties or assessments being levied against the permit holder. Our inability to determine the population of NOV's issued during our audit period resulted into our inability to determine if amounts due DWWM were assessed and recorded in the accounting records.

**Auditor's Recommendation**

**We recommend the Division of Water and Waste Management (DWWM) comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, and establish an effective system of internal controls to track the number of NOV issued through the use of pre-numbered forms or some other type of effective numbering system that would alert management if an NOV form was missing.**

*See Pages 20 and 21 For Finding and DEP's Response*

**Finding 4      Deposit Policies at Regional Offices in Noncompliance with Statute**

- Three of the four DEP Regional Offices, by internal policy, only make deposits once or twice a week instead of daily in noncompliance with the WV Code. With the exception of the Oak Hill Regional Office, Regional Offices were depositing monies either when receipts totaled \$250.00 or routinely once or twice a week.

**Auditor's Recommendation**

**We recommend the DEP comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and deposit monies within 24 hours.**

*See Page 22 For Finding and DEP's Response*

**Finding 5      Internal Control Weakness over Cash Receipts at the DEP Regional Offices**

- Cash receipts were not adequately safeguarded from unauthorized use or disposition for three of the four DEP Regional Offices, we further noted some cash receipt functions were not segregated in all four offices. We were also informed of minimal amounts of cash received by a regional office from the public for copies, map purchases, etc. are sent – via interdepartmental mail – to the DEP Charleston headquarters instead of being deposited by the regional office.

**Auditor's Recommendation**

**We recommend the DEP comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code and implement an effective system of internal controls over cash receipts in the regional offices. We believe all receipts should be securely safeguarded and duties segregated amongst employees to deter fraud. If duties cannot be segregated because of small staff, appropriate monitoring should be performed by management. We further believe all monies received at the offices should follow the normal deposit process and not be sent – via interdepartmental mail – to DEP headquarters for deposit.**

*See Pages 23 and 24 For Finding and DEP's Response*

**Finding 6      Special Handling of Checks**

- DEP requested special handling for 665 transactions, totaling \$19,283,472.10, during FY 2006 through FY 2008. We submitted a list of 290 of the above transactions totaling approximately \$17.5 million to the DEP Controller requesting justification for special handling the payments. Of the 290 transactions, the Controller believes 42 transactions totaling \$74,687.02 are questionable. We believe an additional 52 of the above 290 transactions totaling \$12,652,500.59 are also questionable. We believe special handling payments increases the risk that paper warrants may be lost or stolen.

**Auditor's Recommendation**

**We recommend the DEP strengthen internal controls over special handling to ensure the necessity for special handling is documented and reviewed to reduce the number of special handled payments.**

*See Pages 25 - 27 For Finding and DEP's Response*

**Finding 7      Assets not recorded on Fixed Asset System**

- We found one instance totaling \$5,398 where the DEP did not record the purchase of Books and Periodicals whose collection value is greater than \$5,000 on the Fixed Asset System.

**Auditor's Recommendation**

**We recommend the DEP comply with the West Virginia Expenditure Schedule by adding equipment purchases that fall under object code 077 – Books and Periodicals to the Fixed Asset System when the collection total exceeds \$5,000.00.**

*See Pages 28 and 29 For Finding and DEP's Response*

**Finding 8      Misclassification of Equipment**

- We found five equipment purchases, totaling \$ 16,623.00, out of the 55 equipment purchases selected for testing where the equipment purchases were charged to an incorrect object code.

**Auditor's Recommendation**

**We recommend the DEP comply with the State of West Virginia Expenditure Schedule Instructions when processing equipment purchases in WVFIMS.**

*See Pages 30 and 31 For Finding and DEP's Response*

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**INTRODUCTION**

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**POST AUDIT AUTHORITY**

This is the first of several reports on the ongoing post audit of the West Virginia Department of Environmental Protection (DEP) Division of Water and Waste Management (DWWM). The audit is being 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 expenditures 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 DWWM 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.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**ADMINISTRATIVE OFFICERS AND STAFF  
JULY 1, 2005 TO PRESENT**

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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..... Acting 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)

Ramona Dickson, CPA ..... Controller

Michael Zeto ..... Chief Inspector, Office of Environmental Enforcement

Tom Clarke ..... Director, Division of Mining and Reclamation (August 2008 – Present)

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**AUDIT SCOPE**

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We are conducting an ongoing audit of the Department of Environmental Protection, DWWM for the period July 1, 2005, through June 30, 2007. Our audit scope included a review of internal control and compliance with laws and regulations. The audit was conducted in accordance with auditing standards generally accepted in the United States.

The scope of the findings presented in this report includes (a) a review of the internal control system to account for Notice of Violation Forms issued by the DWWM Enforcement Division for Fiscal Years 2006 and 2007; these forms may result in fines and penalties as well as administrative settlements affecting Funds 3220, 3222, 3325, 3326, 3327, 3331, 3332, 3333, 3337; (b) DEP policies and controls over “special handled” checks for the three-year period ending June 30, 2008 (c) cash collection policies and controls at the Logan, Oak Hill, Philippi, and Welch Regional Offices for the three-year period ending June 30, 2008; (d) DEP equipment purchases and internal controls over inventory for the three-year period ending June 30, 2008; and, (e) Performance bond custodial issues and cash balance of Fund 3303 at December 31, 2008.

The funds audited by us relating to the above findings are included as Supplemental Information beginning on page 32 of this report.

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**OBJECTIVES AND METHODOLOGIES**

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The objectives of our post audit were to audit the revenues and expenditures of the DWWM, 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 financial transactions, records and internal control, 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. 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.

A nonstatistical sampling approach was used. Our samples of transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Transactions were selected for testing using professional judgment.

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

The Department of Environmental Protection's written responses to the findings identified in our audit have not been subjected to the auditing procedures applied in the audit and, accordingly, we express no opinion on them.

The Department of Environmental Protection'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.

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## CONCLUSIONS

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We found we could not determine the nature of receipts for Fund 3303 and if the receipts were properly accounted for because the DEP did not maintain detailed accounting records of the cash balance in the fund. We performed a reasonableness test comparing cash balances in Fund 3303 and 3314 with the available records and found approximately \$1 million in Fund 3303 which could not be identified as to the source of the revenue. We also noted custodial issues pertaining to performance bonds; the DEP is retaining custody of certain bonding instruments instead of delivering them to the State Treasurer's Office in accordance with statute. Additionally, we believe the DWWM does not have an effective system in place to account for violation forms issued by inspectors because the forms are not pre-numbered or no other type of effective numbering system has been implemented that would alert management of missing forms. Generally, violation forms are the first stage of the violation process and may result in fines and penalties levied or assessed against permit holders. Our inability to determine the population of violation forms issued results in our inability to determine if amounts due for fines and penalties as well as administrative settlements were assessed and recorded in the accounting records.

This report also includes findings relating to conditions that we consider to be deficiencies in the design or operation of internal control that could adversely affect the spending unit's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report includes findings regarding significant instances of noncompliance with applicable laws, rules or regulations. Other less significant findings were communicated to the spending unit that did not warrant inclusion in this report.

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## EXIT CONFERENCE

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We discussed this report with management of the spending unit on May 14, 2009. All findings and recommendations were reviewed and discussed. Management's response has been included in italics at the end of each finding.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**MATERIAL WEAKNESSES IN INTERNAL CONTROL AND REPORTABLE COMPLIANCE  
AND OTHER MATTERS FINDINGS**

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In planning and performing our audit of the Department of Environmental Protection, DWWM, in accordance with accounting standards generally accepted in the United States, we considered the Spending Unit's internal control over financial reporting (internal control) as a basis for designing our auditing procedures, but not for the purpose of expressing an opinion on the effectiveness of the Spending Unit's internal control. Accordingly, we do not express an opinion on the effectiveness of the Office's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control. A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control. We believe Findings 1 and 3 contain a deficiency that constitutes a material weakness.

**COMPLIANCE MATTERS**

As part of conducting our post audit, we performed tests of compliance with certain provisions of laws, regulations, contracts and grant agreements. Compliance with applicable compliance requirements is the responsibility of the entity's management. The eight findings presented on the following pages of this report do not provide a legal determination of the entity's compliance.

**Finding 1                      Material Weakness in Internal Control Over Cash Performance Bonds**

**Note: At this time, issues noted in this finding are being researched by our legal staff and this finding is subject to revision based on the lawyer’s conclusions as to interest, etc.**

Condition:                      We were unable to audit the receipts in the Performance Bond Fund 3303 because the DEP does not account for all monies in the fund. The cash balance in this fund and corresponding investment account at December 31, 2008 totaled \$3,311,570.11. Also, we believe interest earnings on cash bonds deposited into Fund 3303 should be remitted to the individual/company submitting the bond. Further, we believe the DEP should remit all cash performance bonds to the State Treasurer’s Office (STO) in accordance with Chapter 12, Article 5, Section 2 of the West Virginia Code and further discussed in Finding #2.

Based on DEP assertions, only cash performance bonds (certified checks, cashier checks and official checks) received by the Division of Mining and Reclamation are deposited into the Performance Bond Fund 3303. Monies deposited into Fund 3303 are invested and interest earnings are retained in the fund. The Division of Mining and Reclamation as well as the Oil and Gas Division also deposit cash performance bonds into the Performance Fund Clearing Account – Fund 3314. All monies deposited into Fund 3314 are invested by the STO in the name of the individual/company submitting the bond and interest earnings are paid annually to the individual/company that submitted the bond based on detailed records supplied by the STO.

Because the DEP Mining and Reclamation bond records do not indicate which of the two above funds the bonds were deposited into, we performed a “reasonableness” test on the cash balances of both funds by comparing actual cash as of December 31, 2008 to cash recorded on available records provided to us by the DEP, the STO, and amounts recorded in WVFIMS, the State’s accounting system. We found \$1,077,003.04 could not be identified as to the source of the revenue due to lack of records.

Secondly, we believe the interest earnings on cash performance bonds in Fund 3303 are due to the individual/company submitting the bond. However, without detailed accounting records, we are unable to determine the amount of interest earnings due and to whom.

Third, we believe all cash performance bonds should be remitted to the State Treasurer’s Office in accordance with Chapter 12, Article 5, Section 2 of the West Virginia Code and already noted elsewhere in this report under Finding #2.

Criteria:                      Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, stated 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 for the state and of persons directly affected by the agency's activities... .”

West Virginia Code Chapter 12, Article 5, Sections 1 and 2, of the West Virginia Code, as amended, states in part that:

**“§12-5-1. Securities defined.**

The term "securities" when used in this article shall include all bonds, securities, debentures, notes or other evidences of indebtedness, and for purposes of this chapter all cash received by any state spending unit intended to serve as security for a legal obligation, whether pursuant to court order or otherwise.

**§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.**

(a) The treasurer of this state, unless otherwise expressly provided by law, shall be custodian of all securities required by law to be deposited with the state or held in legal custody by the state, and all departments of this state, commissioners or agents of the state, who hold any such securities, shall transfer and deliver the same to the state treasurer to be kept and held by him as legal custodian thereof until released in the manner provided by law: *Provided*, That the state treasurer shall establish a list of which securities shall be acceptable securities and notify all state agencies of the contents of that list: *Provided, however*, That the provisions of this subsection shall not apply to the investment management board . . . .“

For the Division of Mining and Reclamation, Chapter 22, Article 3, Section 11c, of the West Virginia Code, as amended, states in part that:

“ (c)(1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. . . **The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued.** The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond...”  
**(Emphasis Added)**

For the Oil and Gas Division, Chapter 22, Article 6, Section 26(d), of the West Virginia Code, as amended, states in part that:

“(d) The form of the bond required by this article shall be approved by the director and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities) letters of credit, establishment of an escrow account, self-bonding or a combination of these methods. . . **The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose of which the deposit is made when the permit is issued. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator.** The operator making the deposit shall be entitled from time to time to receive from the State Treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the Treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the amount of the bond. **(Emphasis Added)**

Cause:

The DEP’s internal control system was weak because no reconciliations were being performed between the cash balances in the funds to cash recorded on DEP bond records that were maintained. Therefore, no system had been implemented to alert the DEP that all monies were not being accounted for.

Further, we believe the DEP depositing the cash performance bonds in Fund 3303 instead of delivering them to the State Treasurer’s Office (STO) for deposit in an STO account was acceptable practice prior to 2004 based on conversations with representatives of the STO, because the STO had no statutory authority to accept cash securities until June 11, 2004 with a change in statute. The DEP Controller told us the DEP was not notified by the STO to remit the cash performance bonds to the STO for safekeeping.

Specifically, the DEP informed us the Division of Mining and Reclamation is depositing cash securities (Cashier Checks, Certified Checks, Money Orders, and Official Checks) into either WVFIMS Fund 3303 - Performance Bond Fund or WVFIMS Fund 3314 - Performance Bond Investments Clearing, depending on if a permittee wants the security to be invested in the Consolidated Investment Fund or not. If the permittee opts to invest their bond by signing a “Request to Invest West Virginia Consolidated Investment Fund” form the monies are deposited into Fund 3314 – Performance Bond Clearing Fund, the “Request to Invest West Virginia Consolidated Investment Fund” is sent to the STO Participate Accounting Group, the STO creates an investment account in the name of the permittee, and the accrued interest is paid to the permittee. If a permittee does not want to invest their bond, the permittee completes a “Option Not to Invest Into the Consolidation Investment Fund” form, and the monies are deposited into Fund 3303, subsequently invested in one investment account in the name of the DEP – differing from investments in Fund 3314 where the STO maintains individual investment accounts that identify each individual/company submitting the bond with associated bond principal and interest - and no interest earned being paid to the permittee.

Effect:

Without records that detail the source of cash in the fund, we are unable to determine the nature of all receipts and if the receipts were received and collected in accordance with applicable laws, rules and regulations that govern them. Also, interest earnings are not being paid to individuals/companies submitting cash performance bonds that are deposited into Fund 3303. Further, the STO has the promulgated authority to provide safekeeping and account for the bonds and interest earnings. The results of our reasonableness test are as follows:

<b><u>Cash Balance at 12/31/08</u></b>	
Fund 3303 Investment Account	\$3,311,070.11
Fund 3303 WVFIMS Account	500.00
Fund 3314 Investment Account	8,895,816.45
Fund 3314 WVFIMS Account	<u>34,028.18</u>
Total Cash	<u>12,241,414.74</u>
<b><u>DEP Records</u></b>	
Cash Performance Bonds per Division of Mining and Reclamation	6,180,609.22
Cash Performance Bonds per Oil & Gas Division	<u>3,885,000.00</u>
Total Cash Performance Bonds per DEP Records at 12/31/08	10,065,609.22
Documents Provided By DEP Detailing Cash in Fund 3314 WVFIMS Account	32,408.37
<b><u>Interest Earnings per WVFIMS and STO Reports</u></b>	
Fund 3303:	
Interest Deposited per WVFIMS (Revenue Code 523)	829,654.36
STO Investment Statement – 7/1994 to 5/1995	49,185.22
Fund 3314 Interest per STO Report provided by DEP at 12/31/08	<u>187,554.53</u>
Total Interest	<u>1,066,394.11</u>
Total Cash per DEP, WVFIMS, and STO Reports	<u>11,164,411.70</u>
<b>Difference</b>	<b><u>\$1,077,003.04</u></b>

Recommendation: We recommend the DEP comply with Chapter 5A, Article 9, Section 8, Chapter 12, Article 5, Sections 1 and 2, Chapter 22, Article 6, Section 26 and Chapter 22, Article 3, Section 11 of the West Virginia Code or seek a change in the statute. We further recommend the DEP create records for Fund 3303 that detail the amounts that make-up the cash balance in the account and perform the following:

- i. Transfer the cash received for performance bonds to the custody of the State Treasurer's Office for safekeeping and investing.
- ii. Remit any interest earnings in Fund 3303 related to cash performance bonds to the individual/company that submitted the bond; and,
- iii. Account for any other monies remaining in the fund in a manner consistent with State law.

*Spending Unit's  
Response:*

*The Department disagrees that money from cash performance bonds in account 3314 are not properly accounted for. Cash performance bonds deposited in the account, interest earned, refund of bonds, and interest accrued on those bonds and distributed annually, as required by law, are substantiated by the State's accounting system, WVFIMS. The cash performance bond was subsequently invested on behalf of the individual/company in account 3314. The departmental cash and investment records for those transactions do reconcile to records in the State Auditor's Office (SAO) and State Treasurer's Office (STO). Accounting and documentation of interest earnings is maintained by the department for the account in WVFIMS.*

*The departmental deposit of cash performance bonds and investment records for account 3303 are documented in WVFIMS since fiscal year 1993 and those transactions do reconcile to records in the State Auditor's Office (SAO) and State Treasurer's Office (STO). Accounting and documentation of interest earnings is maintained by the department for account 3303 in WVFIMS.*

*The department does comply, substantially, with Chapter 5A, Article 8, Section 9 of the West Virginia Code. "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 for the state and of persons directly affected by the agency's activities. ."*

*The department agrees that in the absence of formal notice by the STO of the change in statute mandating placement of cash with the STO safekeeping account, 1346, deposits continued to occur in DEP accounts 3303 and 3314. The statutory authority provided to the STO in June 2004 allows a different method for placing cash performance bonds with the Treasurer for placement in Safekeeping account, 1346. Cash performance bonds will now be physically delivered to the STO. The department will also close accounts 3303 and 3314 with the Budget Office, State Auditor and State Treasurer.*

*The department agrees the reasonableness test of cash in the accounts in comparison to bond activity recorded by the programs indicates a discrepancy of \$677,003.04 as outlined in the reconciliation on the following page. The bond activity recorded by the programs will be reconciled to the cash documented in the accounts.*

*The department disagrees that transfer of surety bonds, as suggested in the recommendation, is mandated by code and General Counsel's opinion can be found as the response to finding 2.*

*The department neither agrees or disagrees that remittance of accrued interest from 1994 to present must be made to those individuals or companies submitting bonds that were held in account 3303 and will be guided by a legal opinion from the department's General Counsel.*

**Reconciliation of Accounts**

<u>Performance Bond Account 3303</u>	<u>DEP</u>
12/31/08 investment balance	\$ 3,311,070.11
Less interest earnings	<u>878,839.58</u>
	2,432,230.53
Plus 12/31/08 cash balance	<u>500.00</u>
<b>Fund balance as of 12/31/08 - 3303</b>	<b>2,432,730.53</b>
<u>Performance Fund Clearing Account – 3314</u>	
12/31/08 investment balance	8,895,816.45
Less interest earnings for calendar year 2008	<u>187,554.53</u>
	8,708,261.92
Plus 12/31/08 cash balance unidentified	<u>1,619.81</u>
<b>Fund balance as of 12/31/08 - 3314</b>	<b>8,709,881.73</b>
<b>Fund balance as of 12/31/08 - 3303 &amp; 3314</b>	<b><u>11,142,612.26</u></b>
Bonds per Division of Mining and Reclamation	6,180,609.22
Bonds per Land Closure Assistance Program	400,000.00
Bonds per the Office of Oil & Gas	<u>3,885,000.00</u>
Total Program Bond records	<u>10,465,609.22</u>
Difference to be identified	\$ <u>677,003.04</u>

**Finding 2                      Bonds Retained by DEP**

**Note: At this time, issues noted in this finding are being researched by our legal staff and this finding is subject to revision based on the lawyer's conclusions as to submission of surety bonds, etc.**

Condition:                      As of December 31, 2008, the Division of Mining and Reclamation has not remitted bonding instruments, totaling approximately \$800,000,000, to the STO for safekeeping in noncompliance with State Code.

Upon further inquiry we were informed letters of credit, self bonds, and surety bonds were being retained at the DEP Headquarters in Charleston and not being transferred to the STO. These types of bonds - 2,879 were recorded on the Division of Mining and Reclamation "All Bond Report" - totaled \$816,582,739.03 as of December 31, 2008, and were being held at the Charleston office in an unlocked fireproof filing cabinet.

We also observed weaknesses in the safeguarding of bonding instruments during our cash counts at the regional offices on November 6, 2008, the Welch and Oak Hill Regional Offices were holding 21 bonding instruments (cashier's checks, official checks, company checks, certified checks, money orders, and certificate of deposits), totaling approximately \$600,000. The eight bonding instruments observed in the Welch Regional Office were being maintained in an unlocked desk drawer. We determined the bonds had been retained at the above regional offices, on average 164.75 and 141.85 days, respectively.

Criteria:                      West Virginia Code Chapter 12, Article 5, Section 2, of the West Virginia Code, as amended, states in part that:

**"(a) The treasurer of this state, unless otherwise expressly provided by law, shall be custodian of all securities required by law to be deposited with the state or held in legal custody by the state, and all departments of this state, commissioners or agents of the state, who hold any such securities, shall transfer and deliver the same to the state treasurer to be kept and held by him as legal custodian thereof until released in the manner provided by law: Provided, That the state treasurer shall establish a list of which securities shall be acceptable securities and notify all state agencies of the contents of that list..." (Emphasis Added)**

Cause:                      It is the practice of DEP to maintain performance bonds (cashier's checks, official checks, company checks, certified checks, money orders, and certificate of deposits) in the Regional Offices until the application has been approved and the permit issued. It is also the practice of DEP to maintain Letters of Credit, Self Bonds, and Surety Bonds at the DEP Charleston Headquarters. DEP does send Certificate of Deposits and some Cash Performance Bonds to the State Treasurer's office. We asked the Division of Mining and Reclamation Bond Specialist during our audit period, why the bonds were not turned over to the Treasurer and were informed the Treasurer only safeguards and stores the

bonds and DEP can do that as each of their field offices have a fire proof safe the records are kept in.

Effect: The State Treasurer's Office safeguards the securities in a locked fireproof vault, as well as provides an accounting record for the securities. By not submitting all bonds to the State Treasurer's Office, there is a greater risk of securities becoming lost, stolen, or damaged.

Recommendation: We recommend that DEP transfer and deliver securities to the State Treasurer's Office for safekeeping in compliance with Chapter 12, Article 5, Section 2 of the West Virginia Code.

*Spending Unit's  
Response:*

*The department agrees with the recommendation that DEP forward all securities to the State Treasurer's Office for safekeeping in compliance with Chapter 12, Article 5, of the West Virginia Code. To the extent, however, that the auditors recommend that custody of surety bonds also be transferred to the Treasurer, we disagree. Surety bonds are not securities and thus fall outside the scope of Code § 12-5-2(a). Surety bonds are instead essentially contracts, analogous to insurance policies. There is no statutory mandate that ordinary contracts be maintained beyond the immediate custody of DEP. Our position finds additional support in Code § 22-3-11(c)(1), which distinguishes collateral bonds from surety bonds. Collateral bonds, insofar as they may consist of cash, securities, or certificates, must be placed with the Treasurer, whereas no such requirement exists with respect to surety bonds.*

*The department agrees that bonds should be secured in regional offices or when received in Charleston. Management will provide oversight, set standard operating procedure and increase internal controls.*



*Spending Unit's*

*Response:*

*DEP does not agree with this finding. The finding implies the improper accounting for \$2.7 million of penalty revenue. While DEP does not believe this to be the true intent of the finding, it does give such an impression in the "effect" section of the finding. It has been established with the audit review team that only 10.5% of the \$2.7 million penalty revenue was generated by administrative processes that require the issuance of a Notice of Violation (NOV). Procedurally, an inspector may initiate and recommend an enforcement action that involves a penalty. However, the decision to proceed with such a staff recommendation is a management decision. It has also been established with the audit review team that a NOV does not automatically result in a penalty. Penalties are assessed by administrative and civil (judicial) proceedings, not a NOV. A NOV is just that, a notice that a violation exists. It is not an attempt to assess a monetary penalty, but is an effective tool to compel compliance. The audit team was also provided information by DEP that clearly demonstrates the agency does track penalties assessed, penalties paid, and penalties due.*

*The finding also attempts to directly correlate penalty amounts with a Notice of Violation (NOV). As reflected in the paragraph above, such a correlation cannot be drawn, given the absence of a requirement for an NOV to be issued prior to assessing a penalty in many instances. Language in 33CSR22 and 47CSR56, both relating to civil administrative penalties, reflect a NOV may be issued by an inspector or other duly authorized representative of the Cabinet Secretary. Additionally, the vast majority (89.5% related to this review) of the penalties assessed and collected in the program areas reviewed do not have a requirement that a NOV be issued prior to assessing a penalty.*

*DEP disagrees with the recommendation regarding pre-numbered NOV forms as an effort to reduce the risk of fraud. DEP does not believe the desired effect of such a measure would be accomplished should the recommendation be implemented. DEP believes that such a measure would create an undue and unnecessary burden to devise and manage a database to track NOVs simply for the purpose of identifying a missing form. Most importantly, DEP contends such an action would have a chilling effect on inspection staff utilizing the NOV as a tool to achieve compliance with applicable laws. The audit review team is aware the agency already has a systematic method of generating a unique number for each NOV. Additionally, RCRA- Info assigns sequential numbers for violations entered. It should also be noted that a NOV is not a uniform citation/criminal summons as used by law enforcement officers, and therefore are not comparable to those pre-numbered forms.*

*With regard to the recommendation regarding compliance to record maintenance requirements, DEP also contends it currently fulfills the requirements of Chapter 5A, Article 8, Section 9 of the West Virginia Code given that it does maintain records containing adequate and proper documentation regarding NOV's.*

**Finding 4                      Deposit Policies at Regional Offices in Noncompliance with Statute**

Condition:                      During our cash counts conducted at the four DEP regional offices, we found three of the four offices, by internal policy, only make deposits once or twice a week instead of daily in noncompliance with the WV Code.

Criteria:                        Chapter 12, Article 2, Section 2(a) of the West Virginia Code, as amended, states in part:

“(a) All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of moneys so received for deposit in the state treasury and **shall deposit within twenty-four hours with the state treasurer all moneys received or collected** by them for or on behalf of the state for any purpose whatsoever. . . .” **(Emphasis Added)**

Cause:                         With the exception of the Oak Hill Regional Office, Regional Offices were depositing monies either when receipts totaled \$250.00 or routinely once or twice a week.

Effect:                         Not making daily deposits results in lost interest earnings; further, daily deposits decrease the risk of lost or stolen receipts.

Recommendation:         We recommend DEP comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and deposit monies within 24 hours of receipt.

*Spending Unit’s  
Response:*

*The department agrees that regional offices should adhere to Chapter 12, Article 2, Section 2(a) requirement to “deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the state...” DEP is drafting a Safekeeping Policy to ensure that agency assets are properly processed and safeguarded.*

*Management will provide oversight, set standard operating procedure and increase internal controls to provide guidance to the regional offices and comply with the 24 hour deposit mandate.*

**Finding 5 Internal Control Weaknesses Over Cash Receipts at the DEP Regional Offices**

**Condition:** We performed cash counts at four DEP regional offices and found cash receipts were not adequately safeguarded from unauthorized use or disposition for three of the four offices; we further noted some cash receipt functions were not segregated in all four offices. We also were told minimal amounts of cash received by a regional office from the public for copies, map purchases, etc. are sent – via interdepartmental mail – to the DEP Charleston headquarters instead of being deposited by the regional office.

Specifically, the Logan, Philippi, and Welch Regional Offices maintained cash receipts and unused receipt books in unlocked desk drawers or file cabinets which are accessible to office personnel. We further noted the employees who prepare the deposits also reconcile amounts deposited as shown on the validated deposit ticket to amounts recorded in the receipt books. At the Oak Hill Office, the individual who opens the mail, records the receipt of monies as well as prepares the deposit. The above functions also are not monitored by management. Finally, we were told by DEP personnel in the Oak Hill Office that on rare occasions, cash is received by other staff at the office for copies, maps, etc. and such monies are sent - via interdepartmental mail - to the DEP Charleston headquarters for deposit instead of following the regular deposit routine of receipting monies and making the deposits at a local bank.

**Criteria:** Heads of agencies are to have an effective system of internal controls in the form of policies and procedures designed to ensure the spending unit operates in compliance with the laws, rules and regulations which govern it. Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, stated 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 for the state and of persons directly affected by the agency’s activities... .”

**Cause:** The DEP has not implemented an effective system of internal control over cash receipts at the regional offices.

**Effect:** Lack of adequate physical safeguards, management oversight, segregation of duties, and remitting cash through interdepartmental mail increases the risk of unauthorized use or disposition of receipts.

**Recommendation:** We recommend DEP comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code and implement an effective system of internal controls over cash receipts in the regional offices. We believe all receipts should be securely safeguarded and duties segregated amongst employees to deter fraud. If duties

cannot be segregated because of small staff, appropriate monitoring should be performed by management. We further believe all monies received at the offices should follow the normal office deposit process and not be sent – via interdepartmental mail - to DEP headquarters for deposit.

*Spending Unit's  
Response:*

*The department agrees that during part of the audit period of fiscal years 2006, 2007, and 2008, 18 transactions totaling \$14,974.32 were identified as deposits sent via interdepartmental mail to the Department of Environmental (DEP) Charleston headquarters for deposit. One deposit was for a check in the amount of \$14,002.84. Of the remaining 17 deposits, over half were for \$10 or less. Procedures have been implemented since fiscal year 2008 to have deposits completed in the regional offices, thus eliminating the need to send checks through interdepartmental mail.*

*Two Charleston headquarter employees received the checks mentioned above via interdepartmental mail when that practice was occurring during part of the audit period. Both were interviewed, and in both instances, the employee stated that they have never received cash via interdepartmental mail for deposit from regional offices. Deposit documents were reviewed and none indicated that cash had been sent through interdepartmental mail. The field staff interviewed has indicated they were speaking hypothetically about any instances where cash would have been received in the regional offices during the audit period.*

*The department does comply, substantially, with Chapter 5A, Article 8, Section 9 of the West Virginia Code. "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 for the state and of persons directly affected by the agency's activities. ."*

*The Charleston headquarters has adequate internal controls to ensure segregation of duties. Because of limited staff in the regional offices and annual or sick leave taken by those staff, it is possible that segregation of duties could be compromised during certain periods. Regional offices often do not have sufficient staff on hand to allow for proper segregation of duties. Management will review regional office processes to ensure the best internal control practices possible with limited staff availability.*

**Finding 6                      Special Handling of Checks**

Condition:                      The DEP requested “special handling” for 665 transactions, totaling \$19,283,472.10, during FY 2006 through FY 2008. “Special Handling” is when a state agency requests a vendor’s paper warrant payment to be returned to the agency instead of being mailed by State Treasurer’s Office or paid electronically. We submitted a list of 290 of the above 665 transactions totaling approximately \$17.5 million to the DEP Controller requesting justification for special handling the payments. Of the 290 transactions, the Controller believes 42 transactions totaling \$74,687.02 are questionable. We believe an additional 52 of the above 290 transactions totaling \$12,652,500.59 are also questionable.

Criteria:                        Chapter 12, Article 3, Section 1a, of the West Virginia Code, as amended, states in part that:  
**“...after the first day of July, two thousand two, the state auditor shall cease issuing paper warrants except for income tax refunds. After that date all warrants except for income tax refunds, shall be issued by electronic funds transfer: Provided, however, That the auditor, in his or her discretion, may issue paper warrants on an emergency basis.” (Emphasis Added)**

Heads of agencies are to have an effective system of internal controls in the form of policies and procedures designed to ensure the spending unit operates in compliance with the laws, rules and regulations which govern it. Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, stated 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 for the state and of persons directly affected by the agency’s activities... .”

Cause:                         In addition to the 42 special handled payments identified as questionable by the DEP Controller, we believe 52 additional payments of the 290 totaling approximately \$12.7 million may be questionable. Specifically, 13 warrants were special handled to the same vendor totaling about \$3 million because the vendor requested the payment to an address that was different than the address in the WVFIMS vendor file. We believe in these types of cases, the DEP should seek to have the remittance address changed in the WVFIMS vendor file. We also noted 20 checks totaling approximately \$6.7 million for installment grant loan payments were special handled because, as policy, the first check was presented to the borrower at the loan closing as directed by bond counsel. The remaining installment payments were not special handled. The Controller told us the DEP no longer special handles the first installment of grant loan payments. Finally, we found 19 warrants to a bank as debt service payments for the DEP building totaling approximately \$3 million were special handled because the “bank did not agree with wire transfer procedures and requested

the check be sent to the vice president”; we find the return of the checks to the DEP instead of being mailed by the State Treasurer questionable. The Controller told us the DEP no longer pays the debt service for the building which is currently being paid by the Department of Administration.

Effect: We believe special handling payments increases the risk that paper warrants may be lost or stolen.

Recommendation: We recommend the DEP strengthen internal controls over special handling to ensure the necessity for special handling is documented and reviewed to reduce the number of special handled payments.

*Spending Unit's*

*Response:*

*The department disagrees that special handling of checks to sub grantees as part of installment grant loan process or the special handle request of payment of debt service payments to the bank is evidence of non-compliance of Chapter 5A, Article 8, Section 9 of the West Virginia Code, : “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 for the state and of persons directly affected by the agency’s activities . . .” The department’s financial processes and transactions are well documented, reconcile to records in West Virginia Financial Information Management System (WVFIMS), the state’s accounting system, reconcile to records of the State Auditor and reconcile to records of the State Treasurer. The department receives an unqualified audit opinion of the loan program from a private, independent audit firm. The past three annual audits have had no findings. The department has had only one finding as a part of the single audit in each of the past four years.*

*The department also disagrees that special handling of invoices is indication of non-compliance to Chapter 12, Article 3, Section 1a: “after the first day of July, two thousand two, the state auditor shall cease issuing paper warrants except for income tax refunds, shall be issued by electronic funds transfer: Provided however, that the auditor, in his or her discretion, may issue paper warrants on an emergency basis.” The issuance of the check was approved and issued at the discretion of the Office of the State Auditor as provided in Chapter 12, Article 3, Section 1a.*

*During the audit period FY2006 through FY2008, the Department of Environmental Protection (DEP) processed 38,177 transactions, totaling \$475.9 million. DEP requested “special handling” for 665 transactions, totaling \$19,283,472. Of these, 290 transactions totaling \$17,579,065 were questioned as to the need for special handling.*

	Number of Transactions	Amount
<b>Total Transactions</b>	38,177	\$475,925,811
<b>Total Special Handled</b>	665	\$19,283,472
<b>Less Questionable Special Handled</b>	290	\$17,579,065
<b>Less Justified Special Handled</b>	235	\$14,586,996
<b>Remaining Questionable Special Handled</b>	55	\$2,992,068

*Of the 290 transactions, the department feels 235 had justifiable need for special handling. The remaining 55 are questionable as to the need for special handling with the SAO. The 55 represent 0.1% of the total 38,177 transactions processed. The \$2,992,068 equal 0.62% of the total \$475.9 million paid. The invoices special handled were less than 1% of total invoices and less than 1% of the amount of total invoices paid.*

*This small amount of invoices special handled illustrates that DEP has adequate internal controls and management oversight to document and review "special handle" requests.*

*A memo from the Office of the State Auditor, "Special Handling" Coversheet, August 27, 2001 states in part: "Exceptions may be granted for unique circumstances."*

*Another memo from the Office of the State Auditor, Travel Related Cash Advances, August 14, 2003 states in part: "I understand that you may now have employees who have been declined for a new travel card, yet still have the need to attend various events for which they must travel. Therefore, I am revising my office's travel policy and allowing agencies to submit cash advance requests for in-state travel."*

*DEP complied with the Office of the State Auditor memos dated August 27, 2001 and August 14, 2003 as related to request for special handling for payment.*

*The remaining 55 transactions were made in the best interests of the department. The department reserves the right to operate in a manner that best serves the functions of the department, serves the interests of vendors and preserves public relations for the State.*

*However, the recent occurrence of corporate identity theft, diversion of state funds and the boldness of unscrupulous individuals demand a more rigid approach. Only in the rare exception and very well documented instance will the department request special handling of or walk through invoices in the future. The inconvenience to honest vendors who deserve consideration of special circumstances cannot outweigh the internal controls set by the Department of Administration, who controls the vendor creation and addresses in WVFIMS, and internal controls set by the State Auditor when disbursing funds on behalf of the State. The department must add to the strength of solid processes and inflexible internal controls to safeguard the assets of the state.*

**Finding 7                      Assets not recorded on Fixed Asset System**

Condition:                      We tested 55 purchases, totaling \$1,024,787.08, out of 1,087 potential equipment purchases, totaling \$5,290,870.77, for the period of July 1, 2005 through June 30, 2008. We found one instance in which we could not locate an equipment purchase on the DEP Fixed Asset System. The expense was miscellaneous publications in the amount of \$5,398.00. Since the total amount of these publications combined were greater than \$5,000.00 dollars, they must be added to the Fixed Asset System. We observed the publications to ensure they were received and on hand.

Criteria:                        The State of West Virginia Expenditures Schedule Instructions for the 2007 Fiscal Year defines expenditure Object Code 077 as follows:

**“077 – Books and Periodicals – All books plus periodicals when bound for permanent filing. Films, Internet library access, VCR tapes, CD’s and recordings (value greater than \$5,000.00). This would include a single book purchased with a value of less than \$5,000.00 if when added to a collection, the total value of the collection would exceed \$5,000 (e.g. State Code books).”**

Furthermore, the West Virginia Expenditures Schedule Instructions also states: **“All equipment with an acquisition cost of \$1,000.00 or more and a useful life of one (1) year or more are to be added to the Fixed Asset System.” (Emphasis Added)**

Cause:                            The Inventory Coordinator stated it was the program office responsibility to inform her of the receipt of books and periodicals over \$5,000.00 because she has never had experience with books and periodicals over \$5,000.00; therefore they were not added to the Fixed Asset system.

Effect:                            We believe that since the books and periodicals are not being added to the Fixed Asset System, it may result in inaccurate financial statements. Also, since they are not added to the Fixed Asset System, they may be more susceptible to being stolen or misplaced.

Recommendation:            We recommend that the West Virginia Department of Environmental Protection comply with the state of West Virginia Expenditure Schedule Instructions by adding equipment purchases that fall under object code 077 – Books and Periodicals to the Fixed Asset System when the collection total of exceeds \$5,000.00.

*Spending Unit’s  
Response:*

*The department agrees the periodicals did meet the \$5,000 requirement for tagging and that the asset was not recorded as required. The asset has now been recorded in the state fixed asset system.*

*The department does comply, substantially, with Chapter 5A, Article 8, Section 9 of the West Virginia Code. “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 for the state and of persons directly affected by the agency's activities. ."*

*The sole instance of not tagging an asset is also evidence that internal controls and management oversight are obviously in place and effective in recording the departmental fixed assets.*

**Finding 8****Misclassification of Equipment**

## Condition:

During our audit of equipment transactions we noted five instances in which equipment transactions were charged to an incorrect object code. The instances are described in further detail in the following table:

#	I-Document	Description	Amount	Object Code	Audited Object Code
1	I007450218	Video Camera	\$6,995.00	058	078
2	I007450218	Video Camera	\$6,995.00	058	078
3	I007872828	Printer	\$1,680.00	058	054
4	I007208432	Shipping on Air Sampler	\$875.00	053	072
5	I008538282	Shipping on Test Meter	\$78.10	053	072

In the first two instances, video cameras were purchased and charged to object code 058 (Miscellaneous Expenses). Since the amounts of the video cameras were greater than \$5,000.00, the expenses should have been charged to object code 078 (Other Capitol Equipment).

In the 3<sup>rd</sup> instance, a printer was purchased and charged to object code 058 (Miscellaneous Expenses). However, since the printer is part of computer equipment, it should have been charged to object code 054 (Computer Supplies and Equipment).

In the last two instances, shipping was incorrectly charged to object code 053 (Postal and Freight). Freight charges on pieces of equipment should be considered as part of the cost of the equipment and therefore charged to the equipment's object code.

## Criteria:

The State of West Virginia Expenditures Schedule for the 2007 Fiscal Year defines expenditure Object Code 054, 058 and 053 as follows:

**“054 – Computer Supplies and Equipment** – Lines, cable, connector, packaged computer software, computer hardware, modem, CD ROM, **printers**, scanners, computers (includes laptops), monitors, and other computer supplies or equipment (does not include computer publications) for use in the office and classroom. (Less than \$5,000 each). (More than \$5,000 see Object Codes 170 and 171).” **(Emphasis Added)**

**“058 – Miscellaneous Equipment Purchases** – All purchases of equipment (including firearms, and medical equipment) with a dollar value less than \$5,000.00. Does not include computer-related equipment (see Object Code 054). **Refer to Asset Object Codes for purchases over \$5,000.00.” (Emphasis Added)**

**053 – Postal and Freight – “Note: Freight charges on pieces of equipment received should be considered as part of the cost of the equipment and charged to an asset object code.” (Emphasis Added)**

Cause: DEP stated the transactions were miscoded by either the program office or Accounts Payable personnel.

Effect: Since the above expense transactions were charged to the incorrect object code, it may result in inaccurate financial statements.

Recommendation: We recommend that the West Virginia Department of Environmental Protection comply with the State of West Virginia Expenditure Schedule Instructions when processing equipment purchase transactions in WVFIMS.

*Spending Unit's  
Response:*

*The department disagrees with the implication that processing of invoices is not in compliance with the West Virginia Expenditure Schedule Instructions. Three instances of miscoding over a three year audit period does not indicate non-compliance, but rather indicates human error which can be and is minimized, but not eradicated. The department, also, does comply, substantially, with Chapter 5A, Article 8, Section 9 of the West Virginia Code, “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 for the state and of persons directly affected by the agency’s activities. .”*

*The department agrees that in three instances equipment purchases were charged to an incorrect object code or freight related to the purchase of equipment was charged to an incorrect object code.*

*During the audit period of fiscal years 2006, 2007, and 2008, a total of 38,177 transactions in the amount of \$475.9 million were processed for payment on all object codes. The finding indicates that discovery was made of one invoice in each fiscal year that was charged to an incorrect object code. This represents 0.4% of payments totaling \$4,705,860 for object codes 053, 054, 058, 072, and 078.*

*The total amount miscoded of \$16,623.10, or 0.4% of the payments, would not represent a material misstatement in the state’s Consolidated Financial Annual Report (CAFR). These immaterial variances demonstrate that the Department of Environmental Protection is in compliance, in the extreme majority, with the State of West Virginia Expenditure Schedule Instructions when processing equipment purchase transactions in WVFIMS. The near perfect error rate in processing transactions through the State Auditor’s Office (SAO) also demonstrates that DEP has adequate internal controls and management oversight in place.*

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF WATER AND WASTE MANAGEMENT**

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**SUPPLEMENTAL INFORMATION  
FUND LISTING**

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**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.

3218 Underground Storage Tank Insurance Fund

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

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 Oil & Gas Trust Deposit Fund

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

3312 Special Reclamation Water Quality Fund

Coal fees & civil penalties for water quality ground improvements.

3314 Performance Bond Investments Clearing Fund

Cash or collateral securities received in lieu of corporate surety from mine and 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 Mining & Reclamation 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 Commission.

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

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.

3345 Special Reclamation Tax Clearing Account

2 and 3 cents coal tax to assist in funding abandoned mine lands.

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.

3485 Litter Control Matching Grants

Fees, grants, collections & other income for litter control programs with WV.

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.

3488 Shiloh Environmental and Landfill Trust

Litigation, awards & court settlements to administer the Shiloh Environmental & Landfill Trust.

3490 Mountain Top Removal

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

3492 Bond Pooling Fund

Other Collections, interest income, fees & licenses to be used for damage created & abandoned by quarry.

3493 Quarry Reclamation Fund

Interest earned due to bond forfeiture shall be used by the division for reclamation of abandoned quarries.

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.

**STATE OF WEST VIRGINIA**

**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 26th day of May 2009.



A handwritten signature in black ink that reads "Stacy L. Sneed". The signature is written in a cursive style.

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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; Office of the State Treasurer; Governor; Attorney General; and State Auditor.