TIED UP IN KNOTS
How Red Tape, Executive Meddling & Staff Shortages Are Strangling
New York’s Environmental Protection Fund
Environmental Advocates of New York's mission is to protect our air, land, water and wildlife and the health of all New Yorkers. Based in Albany, we monitor state government, evaluate proposed laws, and champion policies and practices that will ensure the responsible stewardship of our shared environment. We work to support and strengthen the efforts of New York's environmental community and to make our state a national leader. The tax-exempt 501 (c) (3) nonprofit organization is also the New York affiliate of the National Wildlife Federation.

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Executive Summary

Since its creation in 1993, the Environmental Protection Fund (EPF) has been an easy target for raids by state leaders and lawmakers. Over its lifetime, three governors and several legislatures have taken nearly $500 million from the EPF. Since 2002, one in every four dollars appropriated to the Fund has been “swept” into the State’s General Fund.

EPF raids are not solely a function of New York’s decision-makers selectively redirecting resources, however. These raids are the result of a system designed to hamper state agencies’ ability to spend EPF dollars as intended, namely for environmental protection.

**EPF spending decisions have been inhibited by a Byzantine, unnecessarily complicated and inefficient process put in place by New York’s governors to slow the flow of dollars to approved environmental projects.**

In 2008, Governor David Paterson raised this practice to a new level. He’s tied the Fund in knots by giving New York’s Division of Budget veto authority over each and every EPF dollar, allowing these bureaucrats to stop payment on legally binding state contracts and obstructing environmental projects.

The Governor can now put a “hold” on EPF expenditures, allowing the Fund to accumulate large balances and putting weight behind the claim that its unspent monies should be swept for budget relief.

Environmental Advocates of New York launched an investigation to examine the often knotty process for approving EPF expenditures and reveal how the system deliberately slows environmental spending. This report is the result of our investigation.

We began by collecting appropriation and spending data from State Fiscal Year (SFY) 1994-95 through December of SFY 2007-08, and identified EPF categories with large unspent balances. Environmental Advocates limited our review to the five categories with the largest undisbursed balances, either in dollar terms or as a percentage of the cumulative category appropriation. We further limited our review to established programs, which included the following categories:

- Municipal Waste Reduction & Recycling;
- Secondary Materials Markets;
- Local Waterfront Revitalization;
- Municipal Parks Improvement; and
- Farmland Protection.

In almost every case, the knots of red tape that make the Fund vulnerable to raids can be traced back to a burdensome grants process, a lack of staff to administer funds, or deliberate efforts to slow down the already glacial pace of grant approval. Add to these knots the lack of resources to make necessary matches at the local government level and Fund dollars do not reach projects in a timely fashion.

To address these issues and untie the knots, Environmental Advocates proposes five simple recommendations:

1) Scrap certain new project approvals established by the Division of Budget in 2008.
2) Eliminate certain state agency project reviews.
3) Decrease the cost shares to be paid by not-for-profit organizations or local partners.
4) Consider pre-applications for all programs and rolling application deadlines with awards subject to the availability of funds.
5) Ensure state agencies have the staff capacity to process Fund grants.

The Environmental Protection Fund was established because state lawmakers recognized the need to protect and preserve our unique natural heritage. **However, although New York State approves projects year after year, bureaucratic meddling and executive-level chicanery have gotten in the way of environmental protection.**

Introduction

New York’s Environmental Protection Fund (EPF) is the state’s primary source of funding for a wide range of environmental projects, including land acquisition, water quality protection, municipal parks improvements, recycling programs, and much more. Over the last several years, the environmental community has waged a successful campaign to increase EPF appropriations—from $125 million in State Fiscal Year (SFY) 2003-04 to a high of $250 million in SFY 2007-08.¹

Despite record high appropriation levels, EPF spending has lagged along with environmental benefits. In fact, the gap between appropriations and spending totaled nearly $100 million in SFY 2007-08.

Failure to spend resources allocated for environmental projects is problematic. During tight budget years, unspent EPF balances have become an attractive target to those who seek to close state budget gaps.
During the lifetime of the Fund, various governors and state legislatures have authorized transfers of nearly $500 million, taking resources away from environmental projects as well as denying much-needed support to municipalities, farmers and others depending on EPF resources.

To date, more than a quarter of Fund revenue has been siphoned off for general budget relief. In just the last two years, Governor Paterson and the New York State Legislature have taken $185 million from the Fund.

As a result of these fund transfers, also known as “sweeps,” New York cannot honor legally binding contractual obligations with those who have successfully navigated the Byzantine process of securing funding.

Earlier this year, Environmental Advocates revealed that regular EPF sweeps had created a situation in which more than $40 million in projects were awaiting payment and the State didn’t have the cash to pay the bills. Instead, municipalities and local governments were told to wait and that they would be paid eventually.

**As a result of these raids, there’s not enough money to honor state contracts with localities and not-for-profits.**

This report seeks to answer two simple questions:

- Why has it taken so long to spend EPF funds in the past?
- What can we do to limit the green resources swept away for non-environmental purposes?

## Research Plan

Environmental Advocates of New York collected appropriation and spending data and identified EPF categories with large unspent balances. After sorting through the data, we limited our review to the five categories with the largest undisbursed balances, either in dollar terms or as a percentage of the cumulative category appropriation. We further limited our review to established programs. We determined that it is not worthwhile to scrutinize programs still in development, although they may have a large percentage of unspent funds as compared to their appropriation.

The fiscal data presented in this paper reflects a particular moment in time and two points should be considered when reviewing these numbers. First, state agencies disbursed much more in SFY 2008-09 than in prior years. This snapshot of EPF spending activity may have been taken when the disparity between spending and appropriations were at a particularly low ebb. Second, when we began this work in summer 2008, the State’s fiscal position was much better than it is today. The global economic recession has sent state revenues into freefall, opening up huge budget deficits in SFY 2008-09 and beyond. There’s more pressure than ever on state resources.

### Terms Used in this Report

**Appropriation:** Language in state budget documents authorizing state agencies to spend up to a certain amount for a particular purpose.

**Disbursement:** The outlay, or cash payment, made during the State Fiscal Year, which runs from April 1 to March 31 of any given year.

**Encumber:** To reserve a portion, or in some case all, of an appropriation for a projected cash outlay. For instance, payments against an appropriation as required by a contract with the State are usually encumbered.

**Allocation:** The New York State Division of the Budget’s process for setting aside appropriated funds for a specific purpose. This process is accomplished through issuing “certificates.”

**Commitment:** Term of art describing that an award has been made. The term is often used loosely and is not defined in state law. It should not be confused with monies for which a contract has been signed, or contracts for which funds have been encumbered.

Specifically, Environmental Advocates reviewed:

- the Municipal Waste Reduction & Recycling category run by the Department of Environmental Conservation;
- the Secondary Materials Markets category run by the Empire State Development Corporation;
- the Local Waterfront Revitalization category run by the Department of State;
- the Municipal Parks Improvement category run by the Office of Parks Recreation & Historic Preservation; and
- the Farmland Protection category run by the Department of Agriculture & Markets.

Figure 3 on Page 4 shows category-level appropriation and spending activity in more detail.

After identifying programs for further review, we analyzed the relevant operating legislation, state regulations or guidance documents, and requests for proposals. We then interviewed the state agency officials responsible for running programs supported with EPF dollars to get a better understanding of how these state assistance programs work.
Problem: The EPF Spending Gap

Created by Chapter 610 of the Laws of 1993, the Environmental Protection Fund (EPF) was intended to serve as a trust fund to support New York’s efforts to preserve open space, reduce solid waste, and support the State’s environmental priorities in good times and bad. The Fund is primarily supported with receipts from a small tax on the transfer of all real property. As is the case for all state funds, spending from the EPF is subject to annual appropriation by the New York State Legislature.

The Fund is divided into three accounts—Solid Waste; Parks, Recreation & Historic Preservation; and Open Space. It is further divided into categories within each account. Within these categories, state agencies have developed grant programs according to specifications in state law. However, some categories and purposes are simply described in year-to-year budget appropriation language. As the EPF has grown over the years, the number of categories has grown, too; in SFY 2007-08, 26 categories were funded with EPF dollars. Annual appropriations from the Fund have been made since SFY 1994-95, with the exception of SFY 2001-02. In SFY 2002-03 a supplemental appropriation was made of $125 million, adding to the base amount of $125 million.

Originally set at slightly more than $30 million, appropriations during SFY 2007-08 reached $250 million. Appropriations were increased to $255 million during SFY 2008-09, but decreased to $205 million as the State’s fiscal position deteriorated during the Summer of 2008.

However, as Figure 1 on the left shows, during the preceding five state fiscal years, the amount of money that was actually spent from the EPF did not keep pace with appropriations. In fact, the appropriations versus spending gap reached nearly $100 million in SFY 2007-08.

Based on our review of spending data from SFY 1994-05 through SFY 2007-08, approximately 36 percent of the funds authorized by the Governor and the New York State Legislature were unspent. Figure 2 above shows undisbursed amounts against total appropriations. Per these figures, the portion of undisbursed funds for each account was greater than 30 percent. In the case of Parks, Recreation & Historic Preservation, the percentage of unspent funds was greater than 40 percent.
Figure 3 above breaks down Fund spending by program category. Within the Solid Waste account, two categories accounted for more than 60 percent of the undisbursed funds, the Municipal Waste Reduction/Recycling and Secondary Materials Markets Assistance categories—in total dollar terms more than $62 million. Within the Parks, Recreation & Historic Preservation account, Local Waterfront Revitalization and Parks, Recreation & Historic Preservation accounted for more than 70 percent of the undisbursed funds—more than $191 million. While the Farmland Protection category only accounted for 27 percent of the total undisbursed funds—more than $191 million. While the Farmland Protection category only accounted for 27 percent of the total undisbursed funds within the Open Space account, in total dollar terms the amount undisbursed was quite large. Of the total funds appropriated to the category, $131 million, nearly 60 percent, remained undisbursed in SFY 2007-08, approximately $78 million.

Based on our preliminary research, the EPF is not fulfilling its promise.

### Implementation Observations

As with most state grant programs, programs supported by the EPF are intended to encourage local governments and other recipients to do certain things, such as build capacity for local government recycling programs and improve municipal parks.

To determine why funds aren’t being spent, Environmental Advocates undertook an in-depth look at the process of awarding funds, from the moment monies are made available by the Legislature and the Governor to the final issuance of a state check.

The process of moving state funds can be cumbersome. It involves many steps, the cooperation of multiple state agencies, the Governor’s Office, the State Comptroller’s Office, and in some cases the Attorney General’s Office, as well as the cooperation of those seeking EPF resources.

Figure 4 on Page 5 describes in a general way the clearances and approvals required in spending state funds. This review is informed by a framework used by professors Jeffery Pressman and Aaron Wildvasky in their book, *Implementation*, related to delays and decision points. The figure is intended to serve as a general roadmap and is a simplified overview of a complex process. We identify 21 decision points and at least five institutional decision-makers as state funds flow from programs to projects.

### Delays, Decision Points & the Spigot

According to *Implementation*, delays are a function of the number of decisions that must be made, the number of participants making them, and the extent to which the decision-makers in question share the same goals.

Returning to the 21 decision points in Figure 4, each represents an opportunity for delay. We also recognize that this figure glosses over one of the most complicated aspects of this process, the negotiation of the contract between the applicant and the state agency, which can undergo multiple rounds of negotiation and require internal and external approvals. With paperwork sitting on a desk in one agency or another, the total delays can add up quickly.
### Figure 4: The 21-Step Program for Authorizing EPF Expenditures

<table>
<thead>
<tr>
<th>Decision Point</th>
<th>New Step 2008</th>
<th>Decision-Maker</th>
<th>Nature of Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>DOB</td>
<td>Upon execution of the Enacted Budget, Division of Budget (DOB) must certify funds are available.</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>Agencies</td>
<td>Upon certification that funds are available, state agencies prepare a notice of fund availability that invites applications or requests for proposals (RFP).</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>DOB</td>
<td>Upon completion of the notice of available funds or RFPs, state agencies seek DOB approval.</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>Agencies</td>
<td>Upon approval by DOB, notices of available funds for programs are listed in the Environmental Notice Bulletin, a weekly Department of Environmental Conservation (DEC) publication. Notices describe application requirements, deadlines, etc.</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Applicant</td>
<td>Upon publication of the RFP, prior to the application deadline applicants prepare and submit documents requesting state assistance.</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Agencies</td>
<td>Upon receipt of application, state agencies score against relevant statutory/regulatory criteria and identify highest-scoring applications and make award recommendations. Some programs make awards on a first-come, first-served basis.</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>Governor’s Office</td>
<td>Upon completing recommendations, applications are sent to the Governor’s Office for review. To what extent the Governor’s Office scrutinizes the list is unclear.</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Agencies</td>
<td>Upon sign-off from the Governor’s Office, notices of award are published, typically through an agency or executive press release. A notice of award generally refers to the idea that the State has made a commitment to support a project.</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>Agencies/Applicants</td>
<td>Upon receiving a notice of award, municipalities or not-for-profits enter into contracts with state agency.</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>DOB</td>
<td>Upon finalizing contract terms, state agencies must submit an approval form to DOB that includes an estimate of projected fiscal year and lifetime expenditures.</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>OSC</td>
<td>Upon finalizing terms, contracts are submitted to the Office of the State Comptroller (OSC) for approval.</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>AG</td>
<td>Certain contractual agreements, particularly those related to land acquisition or development rights are also approved by the Attorney General.</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td>Agencies</td>
<td>Upon contract execution, agencies submit forms to encumber the full amount of funds under contract against the appropriate fiscal year appropriation.</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>Applicant</td>
<td>Upon contract execution, applicants are eligible to send a voucher to the agency requesting payment. Most programs reviewed are reimbursement programs, requiring applicants to raise monies upfront before receiving assistance.</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td>Agencies</td>
<td>Upon receipt of the voucher, documents are reviewed by the agency and then submitted to OSC for approval.</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>OSC</td>
<td>Upon receipt of the voucher, OSC approves or denies the request based on availability of funds.</td>
</tr>
<tr>
<td>17</td>
<td></td>
<td>Agencies/Applicants</td>
<td>Upon execution of specific elements of the contract, applicants may submit vouchers for eligible costs, which are subject to approval by the agency and OSC.</td>
</tr>
<tr>
<td>18</td>
<td></td>
<td>Agencies/Applicants</td>
<td>Contracts are frequently extended to allow time to complete work and sometimes amended. Extensions must be approved by OSC and AG, where applicable.</td>
</tr>
<tr>
<td>19</td>
<td></td>
<td>DOB</td>
<td>State agencies must submit another approval form to DOB with an estimate of projected expenditures.</td>
</tr>
<tr>
<td>20</td>
<td></td>
<td>Agencies</td>
<td>Upon determination that project is complete and has satisfied contract terms, final payment requests are submitted to OSC for approval.</td>
</tr>
<tr>
<td>21</td>
<td></td>
<td>OSC</td>
<td>Upon receipt of the final voucher, final payments are made depending on availability of funds.</td>
</tr>
</tbody>
</table>

Key: DOB = Division of Budget, AG = Attorney General, OSC = Office of State Comptroller
Let’s consider two scenarios:

1) Assume that completing the work associated with the project takes at least two years and a high level of efficiency at every step takes three weeks. Such an aggressive timeline would show spending EPF dollars in a little more than three years.

2) Now assume two years for the actual work and six weeks per step. The process of disbursing state funds takes a little less than four and half years for a single project.

A typical state-funded EPF project involves approvals by at least five distinct state agencies, or offices, with very different agendas. A successful project also involves the cooperation of the applicant, typically a local government with its own layers of decision-making. And in a number of cases, the local government is receiving state funds on behalf of another entity, such as a business, or potentially as an intermediary for a landowner, adding even more layers of complexity.

The Spigot

As if this process weren’t complicated enough, new approvals were added in 2008. As the State’s fiscal crisis deteriorated during 2008, then-Budget Director Laura Anglin required state agencies to seek Division of Budget (DOB) approval for all contract extensions, new contracts or contract modifications, or the issuance of Requests for Proposals (RFPs). These discretionary approvals have been strategically inserted and greatly enhance the powers of DOB.

In effect, the DOB gave itself new opportunities to hold up projects in an effort to close, or slow, the spigot on the flow of state spending. First, the DOB can decide what the year’s spending target is going to be. Next, the DOB can delay the release of agency solicitations for grant funding. After that, the DOB can delay the contract approval process and, lastly, even under approved contracts, DOB approval is required by state agencies to cut checks in excess of $500.

The time period in which we reviewed state disbursements did not take into account these approvals; we note them now because they will play a major role in slowing state spending in the future and have strengthened the Governor’s ability to hold up state cash outlays.

EPF Programs

Applicants for EPF funds must clear many hurdles before they reach the finish line. In fact, this obstacle course exists for all state grants programs.

The next section of this paper discusses individual programs funded by EPF dollars. Here we identify various problems with the implementation of these programs related to specific details of the grants process, or related to the state agency’s capacity to quickly process the paperwork generated. Figure 5 above catalogs problems associated with these programs by type.

### Municipal Waste Reduction & Recycling

#### Program Description

Under the Municipal Waste Reduction & Recycling (MWR&R) category, the Department of Environmental Conservation (DEC) operates two grant programs. The first provides assistance to local governments to improve recycling infrastructure. Per the operating statute, the main goal of this program is to help local governments expand recycling capacity. Eligible activities include the purchase of recyclables recovery equipment to help separate solid waste and promote recycling. Other eligible purposes include purchasing recycling containers (e.g. the blue bins used in curbside recycling programs). Changes to the operating statute in 2000 also authorized the DEC make grants to municipalities for the purpose of hiring recycling coordinators to help improve public awareness of and increase community participation in local recycling programs.

Awards may not exceed 50 percent of the cost of the project and are capped at $2 million. Other state and federal assistance are ineligible for making the local match. The operating statute requires the DEC to periodically reimburse the municipality as the project develops, or at the end of the project as agreed upon by the parties.

In addition, the DEC makes funds available for assistance with holding Household Hazardous Waste...
(HHW) collection days, as well as the construction of facilities to properly dispose of such waste. Generally speaking, approximately one-third of the funds made available through this category are for municipal recycling coordinators and grants for HHW activities tend to be considerably smaller than other capital grants. In the past, the program activities described previously were also funded with bond proceeds from the 1996 Clean Water/Clean Air Bond Act and other, older bond programs.

**Grant Application Process**
For the purposes of this paper, MWR&R capital grants and grants to fund recycling coordinators and HHW grants are considered together. MWR&R is not a competitive grants program. Per DEC regulations, proposals are accepted on a first-come, first-served basis. Although not explicitly addressed in the statute, municipalities are required to fill out a simple pre-application form that describes the scope of their project, its projected costs and timeframe, as well as information that allows the DEC to determine eligibility.

Upon submittal of a pre-application form, applicants for the MWR&R grants programs are added to a funding list. As of June 2009, the project waiting list consisted of 132 applicants requesting a little more than $40 million. Projects wait approximately two to three years before a full application is requested by the DEC. When funds are made available, the agency requests full applications from local partners and gives 60 days to submit a completed application. The DEC works its way down the list until funding is exhausted for the year. The number of projects varies each year by size and those at the top of the list are considered first. For instance, several projects requesting state assistance payments in the amount of $2 million at the top of the list will limit the number of projects conducted that year.

**Implementation Problems**
In the past, the DEC’s primary implementation problem was related to staff capacity. In SFY 2003-04, the agency dedicated a little more than one full-time equivalent (FTE) staff person to administer $6 million. The one staffer processed only 12 contracts. The same level of staff time was dedicated in SFY 2004-05 and 2005-06. Getting monies under contract appears to have been a problem. At the end of 2007, more than $24 million was not yet under contract.

In SFY 2007-08, the agency had approximately three and one-half FTE staff people able to process more than six times as many contracts as one staffer working alone. Maintaining a consistent level of staff to administer program applications and execute contracts has allowed the program to operate more efficiently, based on our analysis.

Another implementation problem involves the way the DEC handles unspent funds. For instance, the data presented in Appendix A show a peculiar feature of the spending process. Some programs, such as the MWR&R, show funds still available to be spent against appropriations that are more than eight years old. At least in the case of this program, some projects did not spend the full amount of their contract for a variety of reasons, which freed up state resources. In this instance, the DEC would try to get those monies back under contract quickly. However, simply getting the monies under contract—perhaps not for projects that have been completed—allowed this problem to re-emerge. Projects would still under-spend, leaving “old money” on the books. This problem may also explain why the unencumbered amounts for MWR&R were high at the end of 2007. Today, the agency has focused on using old resources to zero-out completed projects in an effort to wipe old appropriation authority off the books.

**Recommendations**
1) Set aside a small portion of the MWR&R appropriation (perhaps up to $300,000) to support three staff positions for program implementation, thus providing consistent levels of effort and freeing up other resources to fund staff positions at the agency.
2) Continue the practice of zeroing out projects with freed-up resources to avoid the problem of unspent funds.

**Secondary Materials Markets**

**Program Description**
Under the Secondary Materials Markets category, the Empire State Development Corporation (ESDC) runs the Environmental Investment Program (EIP). In broad terms, this program helps New York businesses expand their capacity to recycle and reuse the by-products of their operations or to reduce the amount of waste before it is generated by changing manufacturing processes. The EIP provides grants to help businesses install equipment or machinery that results in less waste. The EIP also provides EPF dollars for research and development projects to make environmentally responsible practices and products more commercially available. In addition, the EIP helps New York businesses improve their practices through a technical assistance program.

Similar to the MWR&R program, funds for waste prevention assistance are made available to periodically reimburse entities for costs incurred. State
Grants related to capital initiatives cannot be made for more than 50 percent of the total project costs. Other state and federal assistance are ineligible for making the local match. Technical assistance grants and research grants have somewhat different cost share requirements and are in some cases capped or only available to not-for-profit organizations or municipalities acting on behalf of businesses. Per staff, contracts are performance-based and the ESDC requires applicants to fulfill their environmental outcomes prior to releasing funds.

**Grant Application Process**
Grant awards are decided on a monthly basis, depending on funding availability. The ESDC has a staff of eight who work with applicants to develop successful applications. For direct improvements to business processes through capital grants, monies are disbursed through municipalities on behalf of businesses. ESDC staff place a great deal of emphasis on environmental outcomes, such as the measurable benefits of state investment in reducing pollution or achieving recycling rates.

**Implementation Problems**
In many ways, the implementation of this program is exemplary. Per our review of spending against appropriations, nearly all of the funds appropriated for the secondary markets and materials have been disbursed or encumbered (See Appendix A). Because projects are reviewed nearly continuously, the grants process combines steps 4, 5 and 6 from Figure 4 on Page 5.

Also, unlike other program areas, there is a great deal of initial contact between ESDC staff and applicants prior to submitting a formal application. Based on staff interviews, we believe these initial contacts produced higher quality applications that resulted in fewer problems in later stages of the process. The recipients may also be somewhat more sophisticated in their efforts, as their business plans depend to some extent on the receipt of state funds. However, the reason for a large undisbursed balance is directly attributable to the DOB’s failure to allocate resources for the program. Therefore, Step 1 in Figure 4 has not been accomplished, short-circuiting everything else.

Since we collected fiscal data, the DOB certified that funds were available to be spent for the SFY 2005-06 appropriation in the amount of $8.75 million. But appropriations from SFY 2006-07 through SFY 2008-09—more than $20 million—have not yet been certified.

Based on the large chunk of unallocated monies, funding for this program was cut by more than $6 million from the Enacted Budget passed in April 2008. At that time, the DOB failed to provide an explanation as to why program funds had not been made available. In basic terms, the main problem with this program is that ESDC officials can’t even get access to the money they are supposed to spend.

**Recommendations**
1) The DOB should allocate funds made available to the program by the State Legislature and the Governor per legislative intent.
2) The Legislature should conduct a separate inquiry into why these funds were not made available.

**Local Waterfront Revitalization**

**Program Description**
Every year, the Department of State (DOS), through the Division of Coastal Resources, solicits grant applications for its Local Waterfront Revitalization Program (LWRP). The DOS accepts proposals for grants from a variety of categories, including but not limited to: visioning and development of local or regional revitalization strategies; completing or implementing local or regional waterfront revitalization; and preparing or implementing a local or regional watershed management plan, downtown and hamlet revitalization, urban waterfront redevelopment; and obtaining signage to connect waterways. For instance, funds can be used for projects to provide better access to waterfronts, including the creation of pedestrian and bike paths, the repair and upgrade of navigation docks, the stabilization of shorelines or the construction of infrastructure for docks and handicapped accessibility, or for the planning purposes described above.

State grants cannot exceed 50 percent of the cost of the program and there is no cap on costs. Similar to the other programs heretofore described, funds are made available to periodically reimburse entities for costs incurred. Other EPF and federal assistance funds are ineligible for making the local match. The Legislature and the Governor typically require 25 percent of available funding to be spent in underserved or impoverished communities.

**Grant Application Process**
The DOS solicits applications for this competitive grants program in April and awards are typically announced in November or December of that year. Funding criteria established by the DOS include: the extent to which the project expands access to public waterways; the extent to which the project protects natural resources, such as restoring wildlife habitat; the extent to which the project creates jobs or offers development potential; and the regional significance of the project; among other criteria. Applications are scored against a point scale and the highest scoring applications receive funds until all resources are gone.
Implementation Problems
The two main issues that slow spending for Local Waterfront Revitalization are limited staff capacity and the local match. Again, a detailed analysis of the fiscal data shows that approximately $32 million remained unencumbered at the end of calendar year 2007. Once again, executing contracts appears to be the bottleneck and lack of staff may be partly to blame.

In SFY 2007-08, the DOS had nine FTEs administering EPF funds. In SFY 2003-04, the agency had 14 FTEs, although the amount appropriation amounts were $14 million less than in SFY 2007-08. Projects generally take three to four years to complete after the contract is approved; some can take much longer.

More than 60 contracts for LWRP projects have been open for more than six years, although officials pointed out many of these were in the final stages of completion. Staff have taken on significantly more work and the DOS does not have the capacity to complete projects in a more timely manner. Nor can they give as much help to grant recipients throughout the process. Agency officials cited turnover in local governments as a problem because new staff have to learn the process and the nuances in administering state funds. In fact, the DOS requires award recipients to attend a seminar series on successfully completing projects.

The second obstacle for the LWRP is the 50 percent local match for cash-strapped municipalities, a heavy burden to bear especially when federal and state funds are considered ineligible. Given the financial restraints on local governments, revisiting the local match may help local governments raise funds more easily and allow them to close out existing projects, including the 60 or so projects that have been open for more than six years.

Recommendations
1) Lower the matching requirement such that the state picks up 75 percent of the project cost, or allow federal funds to be considered matching dollars, or revisit the scoring criteria to add more weight to projects that can demonstrate they have already received private or local resources.

2) Set aside a capped amount in the appropriation to support staff for program implementation. It’s worth noting that the EPF funds in this case can be used to support local government staff salaries, but not salaries for state employees.

Parks, Recreation & Historic Preservation Projects
Program Description
The Office of Parks, Recreation & Historic Preservation (OPRHP) runs four distinct grant programs with EPF dollars, with somewhat different intents. Funds are intended to be used “to preserve, rehabilitate or restore lands, waters or structures for use by all segments of the population for park recreation purposes, including such things as playgrounds, courts, rinks, community gardens...,” to restore properties on the National Register of Historic Places, or for projects conducted in accordance with approved heritage area plans. For the sake of this analysis, we will discuss all programs as one funding stream and refer to them as “municipal parks grants.”

Municipalities, state agencies, public benefit corporations, public authorities and not-for-profit corporations with an ownership interest in certain properties may apply for state funds, although restrictions differ between grant programs.

Recent reforms to the OPRHP grants program have lowered the local share of state grants and amended the definitions of eligible costs. State assistance payments may not exceed 50 percent of project cost. However, in impoverished areas, the local share may be reduced to 25 percent of the total project cost per changes in state law. The same law also made federal funds or assistance from other parties eligible to match state funds, making it easier for local governments to meet the 50 percent match.

Grants Process
Typically, a notice of the availability of state funds is made in April and applications are due in June of that year. Awards are announced in November or December of the same year. Again, per agency staff, it takes an average of five years to close a project.

Implementation Problems
The agency has recently done a great deal to eliminate certain roadblocks. OPRHP officials contend that slow spending associated with these programs has been affected by explosive growth in funds dedicated to parks programs by lawmakers. Appropriations have increased by 14 percent from SFY 2004-05 to 2005-06, and nearly 42 percent from SFY 2005-06 to 2006-07. Supporting their claim, the bulk of unspent funds were from the most recent appropriations. But we identified a huge chunk of undisbursed monies not yet under contract. More than $60 million remained unencumbered at the end of calendar year 2007. Also, based on our data, many OPRHP appropriations have not
yet been spent down (See Appendix A). Clearly the agency has had trouble closing out projects. And per information supplied by the agency, approximately 12 projects took more than 10 years to complete.

Unlike other programs, lack of staff is not a cause of delay. Currently, the OPRHP has 35 people in the grants bureau, with approximately 15 FTEs dedicated to managing EPF-funded work.

To its credit, the OPRHP brought applicants together during 2007 and 2008 to determine how to move funds more quickly. During these forums, some localities suggested revisiting whether funds could be used for structural and planning assessments. Localities often applied for projects without conducting assessments and fully understanding project costs.

This lack of understanding resulted in delays. In a number of cases, municipalities submitted applications for one purpose and had to substantially change the project based on new information prior to finalizing a contract with the OPRHP.

By changing the definitions, the 2008 amendments should help address this issue by assisting localities to develop better-conceived projects. Also, in an effort to ease the burden on municipalities, the New York State Legislature and the Governor eased restrictions on the sources for matching funds, making the local partner responsible for only 25 percent of the total project cost if the project is located in an impoverished area.

**Recommendations**

1) Although some changes have already been made to this program, in order to develop better conceived projects, OPRHP officials should consider instituting a pre-application process. Projects could then be ranked and scored using rolling or monthly application deadlines.

**Farmland Protection**

**Program Description**

In an effort to protect, maintain and preserve New York State’s agricultural lands for future use, in 1992 the State passed legislation creating the Agricultural Protection Act (Act). EPF monies were made available to support the Act’s implementation. The Commissioner of the Department of Agriculture & Markets (Ag & Markets) is authorized to run two grant programs. The first provides state resources to county and municipal governments for the preparation of farmland protection plans. The plans are intended to encourage local governments to identify lands to be protected, as well as the strategies to promote the continued agricultural use of those lands. Today, almost all counties have farmland protection plans in place and a number of municipalities do, as well.

The second program, the Farmland Protection Implementation Grant Program, provides up to 75 percent of the cost of county and municipal governments to implement farmland protection plans. This program uses EPF dollars to fund a portion of the cost of purchasing development rights for farms using conservation easements. Simply put, the program pays farmers to give up the development rights on their property; the farmers may use the payments however they choose. Funds are often reinvested in farm operations or used as retirement income.

Of the more than $100 million that has been awarded to farmland preservation, only 36,000 acres of New York State farmland have been preserved. In SFY 2007-08, during Step 11 of the grant process, 35 new awards were made. Also, during SFY 2007-08, 34 old projects awarded in previous years were closed. By way of comparison, only 10 to 12 projects were completed in SFY 2005-06. At the time of this writing, approximately 86 projects await completion.

**Grants Process**

The grants process begins when Ag & Markets issues a request for proposals (RFP), most often in mid-June with a mid-September submission deadline. Ag & Markets guidelines describe a 24-step process that can take at least four to five years to complete.

**Implementation Problems**

The Farmland Protection Program suffers from both process and capacity problems. At the state level, approximately two full-time staff run the program. While applications for state assistance routinely outstrip available funding, implementation details have bogged down the program.

By way of comparison, a similar Pennsylvania program has protected more then 400,000 acres. Per Ag & Markets, in Pennsylvania approximately one full-time employee handles approximately $3 million in applications. In New York, approximately one FTE is responsible for $10 to $15 million.

In Ag & Market’s defense, although Figure 3 on Page 4 shows a significant undisbursed balance, a large percentage of farmland protection monies are encumbered, or reserved for payments. This likely reflects the number of projects at some stage of the contractual process.

In addition to the steps listed in Figure 4 on Page 5 related to moving state funds, this program has sup-
plemental steps. After notifying the local partner or municipality that an application is accepted, the local partner must: negotiate conservation easement language with the landowner; retain consultants to conduct a title search, appraisal and legal survey; have purchase and sale contracts executed; prepare a stewardship agreement; and submit the completed project file to Ag & Markets for review. Each of these steps takes time and offers opportunities for delay. Instead of 21 decision points, this program may have more than 30.

The failure of the program appears to be the ability to close out projects in a timely manner, which is a function of the lack of staff capacity, as well as lack of sophistication on the part of applicants.

Per agency staff, many applicants do not completely understand all the steps or restrictions associated with the program when they apply. In response, Ag & Markets has begun conducting workshops to better inform applicants up front. In addition, in 2008, the Legislature and the Governor amended the operating statute to allow some program monies to flow for capacity grants for not-for-profits to at least help them recover some costs.

**Recommendations**

1) Require applicants to fill out pre-application forms and meet with grant officers before receiving an award.
2) Decrease the size of the local share for assistance. Assembly bill A.6686/S.5414 decreases the cost share for local partners and not-for-profits.
3) Carve out a capped amount of EPF dollars in the appropriation to fund staff for the administration of the program.

**Summary Recommendations & Conclusion**

The policy tools related to grants programs are limited. Although certainly not an exhaustive list, these tools include changing the levels of the subsidies, eliminating and modifying application reviews and clearances, expanding or restricting eligibility, or changing the purposes for which the subsidies are provided.

Based on Environmental Advocates of New York’s review of these grant programs, we offer the following recommendations:

- **Scrap certain new approvals added by the DOB in 2008.** Seeking DOB approval for no-cost time extensions on contracts wastes everyone’s time. While we see some benefit in the DOB being better able to manage cash, multiple reviews for multiple projects creates multiple opportunities for delay.
- **Eliminate certain state-agency project reviews.** As described in Figure 4, the State can eliminate and consolidate bureaucratic reviews. For instance, the DOB and the Governor’s Office, two wings of the Executive Chamber, should let agency staff evaluate applications on their merits and simply sign-off on agency spending plans.
- **Decrease the cost shares to be paid by not-for-profits or local partners.** Every program we reviewed relied on the local partner to carry a heavy load. The State should sweeten the deal so that localities and not-for-profits have an easier time raising the requisite matching funds. In cases where the local government is the applicant, this places a smaller burden on local taxpayers and may allow projects to be completed in a more timely manner.
- **Consider pre-applications for programs and adopting a rolling application deadline with awards subject to the availability of funds.** For some programs, such as the OPRHP and Farmland Protection, pre-applications that encourage applicants to contact the agencies would make for better, more complete applications. A rolling approach, similar to the ESDC model, also provides for early interaction between applicants and agency staff.

A model worth exploring may be that employed by the EFC for state revolving funds. Upon enactment of appropriations, awards would be made within the amounts available. Projects with the highest scores would be eligible for awards until funds are exhausted. Upon announcing an award, an applicant could have a set amount of time to submit final paperwork and execute a contract, and failure to submit those documents would give the next project in line a chance at funding. By collecting and scoring applications year round, agencies could move directly into sending notices of awards and
executing contracts. This could shave months off the awards process. Such an application process would also better inform lawmakers about the level of interest in a particular program to help gauge the size of future appropriations.

- Ensure state agencies have the staff capacity to process grant funds. Making a limited amount of EPF monies available for staff frees up general fund dollars to support other core functions at state agencies. But language capping the amount spent on staff should be inserted into the appropriation copy. To be clear, we are not recommending a blanket authorization to fund staff with EPF resources. But certain programs should make a small amount of resources available to help implement grant programs. It is worth remembering that the Clean Water / Clean Air Bond Act included setting aside certain funds to support a Bond Act implementation office.

**Conclusion**

While New York approves environmental projects year after year, Governor Paterson and the New York State Legislature’s fund transfers or “sweeps” from the EPF, in addition to the spending knots inherent in an overly complicated approval process, have gotten in the way of environmental protection. It’s time for New York’s leaders to reform the EPF so that it can achieve its intended goals.

New York established the Environmental Protection Fund in 1993 because state leaders and lawmakers recognized the need to protect and preserve our unique natural heritage.

Originally set at $30 million, the Fund has grown to more than $200 million. But regardless of the State’s good intentions, EPF spending has not kept pace with New York’s commitment to protect our air, land and water, and $500 million has been swept and returned to the black hole of the State’s General Fund.

**By simplifying a knotty grant application and review process, New York can free up state agencies and get money to deserving projects and programs more efficiently and effectively.**

Breaking down barriers to Environmental Protection Fund spending will only benefit the health of New York’s environment, as well as that of 19 million New Yorkers. And by getting monies flowing to environmentally beneficial projects, it becomes less likely these monies will be swept by state leaders and lawmakers looking for a quick fix to address New York’s budget woes.
Appendix A

Percent Appropriation Undisbursed or Unencumbered by Year

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Endnotes

1 Enacted Budget appropriations dipped to $222 million in SFY 2009-10 due in large part to the impacts of the economic downturn and significant projected budget deficits. In addition, the Enacted Budget for SFY 2008-09 originally appropriated $255 million from the EPF, but this was reduced to $205 million in revisions designed to address the growing state budget deficit.


4 A conservation easement is basically a legal restriction on the future development of real property to protect its natural condition or the open qualities that make it environmentally desirable.

