

STATE OF NEW YORK



Office of the Inspector General Metropolitan Transportation Authority

2011 ANNUAL REPORT

Barry L. Kluger
Inspector General

It's a BIG SYSTEM

HELP US KEEP an EYE ON IT



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ABOUT THE INSPECTOR GENERAL

MESSAGE

I believe strongly that forging partnerships and cooperative working relationships inside and out of the Metropolitan Transportation Authority (MTA), while at all times preserving the independence of the Office of the MTA Inspector General (OIG), is the best way for us to effect positive change for the benefit of the MTA and its customers. We continue to build on that approach. In the pages that follow, we describe the findings and recommendations we reported in 2011, as well as some of the other significant work we performed in furtherance of our mission to help the MTA watch its money carefully, improve productivity, and make operations safer and more efficient. Our staff also continued to work hard to assist MTA customers seeking our help.

This year, our Audit division completed significant work reflecting analyses and evaluations designed to improve agency response to weather emergencies, escalator and elevator maintenance, design problems with capital projects and cost effectiveness of MTA operations. For example, in this Annual Report you can read brief explanations of our findings and recommendations regarding the remote monitoring technology to prevent outages and warn of customer entrapments in NYC Transit elevators and escalators (page 12); misclassification of design errors and omissions that increase the risk of repeating mistakes on capital projects (page 15); and maintenance and repair of privately-owned elevators and escalators located in transit facilities (page 14). You can follow up on this and other work in more detail on our website at <http://mtaig.state.ny.us/>.¹

In performing OIG work, we have continued to develop numerous investigative and prosecutorial partnerships on the federal, state, and local level, including the United States Attorneys for the Southern and Eastern Districts of New York; the FBI and IRS; the Office of Labor Racketeering and Fraud Investigations in the United States Department of Labor; the state and federal Departments of Transportation; the New York State Attorney General and the State Comptroller; the State Inspector General and the Inspector General of the Port Authority of New York and New Jersey; the New York City Police Department, as well as the New York City Department of Investigation; and the District Attorneys in the 12 counties comprising the MTA Commuter District.

¹ Readers of the electronic version of this Annual Report can press Ctrl + Click on this link to go directly to the Home page of our website, or on any of the numbers in parentheses to go directly to that page of this Report. In 2011, we rolled out a new website feature called “Breaking News” to help the public keep abreast of our latest work of particular interest. Located on the Home page, “Breaking News” contains brief descriptions of the investigations and audits highlighted, along with links to related media coverage and law enforcement statements.

~ ABOUT THE INSPECTOR GENERAL ~
MESSAGE

As made clear in these pages, this extensive networking has greatly increased the effectiveness of our investigations. For example, you can read about some of the cases that our Investigations division and its Construction Fraud unit developed and continued to work on with prosecutors, including a federal investigation of disadvantaged business enterprise (DBE) fraud resulting in a prime contractor agreeing to pay \$19.6 million – half of that paid to the MTA (page 24); a prosecution by the Manhattan district attorney stemming from work by an investigative task force, including OIG, concerning certain construction-material testing companies and some of their employees (page 25); a prosecution by the Staten Island district attorney of fraudulent billing of the Access-A-Ride program (page 25); and our work jointly with the Office of the United States Attorney for the Southern District of New York, the FBI, the New York State Attorney General, and the Railroad Retirement Board Inspector General, on a criminal investigation of disability fraud allegedly committed by Long Island Railroad retirees (page 24).

Just as we demonstrate the value of partnerships with outside agencies, we continue to help effect meaningful change through our “independent but cooperative” approach within the MTA itself. The MTA response to the blizzard of 2010 involving massive disruption provides an excellent example.

On December 26, 2010 and the early hours of December 27, over two feet of snow fell on the New York metropolitan area accompanied by high winds. Subway and bus service was dramatically curtailed and hundreds of people were stranded on trains overnight. OIG initiated a review in the days immediately after the storm to determine whether and when plans were put into action, and whether any such plans were adequate. We designed our review to augment, not duplicate, the extensive internal review then underway by MTA and NYC Transit. During our respective efforts, we shared our findings and recommendations with agency management, which subsequently accepted all of our recommendations and is in various stages of implementing them.

Sometimes we develop overlapping benefits from our internal and external partnerships. For example, our active participation in the federal investigation of disadvantaged business enterprise fraud discussed above had both deterrent and monetary effects favorable to the MTA. Building on this, the MTA sought our advice on the most appropriate use of its \$9.8 million share of the \$19.6 million recovery. After consultation with MTA senior management, it was mutually agreed that approximately one-third of this money would be re-invested in the MTA’s Small Business Mentoring Program. Many of the small construction firms participating in that program could qualify as Minority, Women-Owned, and Disadvantaged Business Enterprises, and thus this investment should deepen the pool of qualified firms available for MTA projects – all to the betterment of the MTA, its customers, and the community at large.

~ ABOUT THE INSPECTOR GENERAL ~
MESSAGE

And sometimes we simply help make life better for a single MTA customer who turns to us in need. One particularly satisfying case this year involved a woman who returned her husband's EZ Pass tag because he had recently died and she is legally blind. Although she was originally told that the balance remaining was \$64.21, she was later told that she was due only twenty-one cents. Complainant called our Hotline regarding the discrepancy.

While EZ Pass staff had a logical explanation, following our intervention they determined that under the unique circumstances presented by complainant, she would be refunded the full amount of the balance. The complainant actually wrote to us to express her gratitude for the refund.

I am very pleased to submit this 2011 Annual Report to you, and am proud of my staff for its diligent work and many accomplishments throughout this year. We look forward to doing even more to help the MTA and its riders in the years to come.

BRIEF BIO

On February 14, 2007, **Barry L. Kluger** was appointed by the Governor to serve as Inspector General of the Metropolitan Transportation Authority. This appointment was confirmed by the New York State Senate on May 30, 2007. Mr. Kluger served in the Office of the Bronx County District Attorney from 1975 until his appointment as MTA Inspector General. In 1989, the Bronx County District Attorney appointed Mr. Kluger to be his Chief Assistant District Attorney. Previously, Mr. Kluger served as Executive Assistant District Attorney, Chief of the Investigations Division and Chief of the Arson and Economic Crime Bureau. Mr. Kluger received his B.A. from City College of the City University of New York and his Juris Doctorate from Brooklyn Law School. Mr. Kluger is a lifelong resident of New York City.

In 2009, two years into his term as MTA Inspector General, Mr. Kluger was elected to the Board of the Association of Inspectors General, a national organization comprised of federal, state, and local members from across the country. In 2010, he was elected 2nd Vice President.

THE ROLE OF THE MTA INSPECTOR GENERAL

Creation of the Office

In 1983, at the request of the Governor, a virtually unanimous state legislature created the Office of the Inspector General specifically within the MTA, but reporting only to the Governor and Legislature, and independent of MTA management and its Board. The Governor's Special MTA Study Panel concluded that among the changes that would help the MTA and the state to improve services and control costs, "Most important of these is the restructuring and strengthening of the MTA's Inspector General function." Indeed, the Study Panel's report declared:

The Panel views the lack of a strong Inspector General function within the MTA as a serious deficiency. A strong Inspector General is needed to hear and act upon complaints about service deficiencies, to audit performance, to assure that appropriate follow-up action is taken on outside audit findings, and to investigate charges of fraud and abuse. . . . The Inspector General . . . should be appointed to a fixed term, to assure a measure of independence. However, to be truly effective the Inspector General must also have a close day-to-day working relationship with MTA's top management and with its Board.

Statutory Authority

Public Authorities Law (PAL) §1279 authorizes and directs the MTA Inspector General to independently review the operations of the MTA and its constituent agencies: MTA New York City Transit (NYC Transit), MTA Long Island Rail Road (LIRR), MTA Metro-North Railroad (Metro-North), MTA Long Island Bus (LI Bus), MTA Bridges and Tunnels (Bridges and Tunnels), MTA Bus Company (MTA Bus), and MTA Capital Construction Company (Capital Construction).²

In terms of the scope of its statutory authority to perform this review, the Inspector General has "full and unrestricted access" to all "records, information, data, reports, plans, projections, contracts, memoranda, correspondence and any others materials" of the MTA (PAL 1279[3]).

² As used in this report, unless the context indicates otherwise, the term "MTA" includes the constituent agencies.

~ ABOUT THE INSPECTOR GENERAL ~
THE ROLE OF THE MTA INSPECTOR GENERAL

The Inspector General also has the following statutory functions, powers, and duties (1279[4]):

- Receive and investigate complaints from any source or upon his own initiative concerning alleged abuses, frauds, and service deficiencies, relating to the MTA.
- Initiate such reviews as he deems appropriate of the operations of the MTA to identify areas in which performance might be improved and available funds used more effectively.
- Recommend remedial action to be taken by the MTA to overcome or correct operating or maintenance deficiencies or inefficiencies that he determines to exist.
- Make available to appropriate law enforcement officials information and evidence relating to criminal acts that he obtains in the course of his duties.
- Subpoena witnesses, administer oaths and affirmations, take testimony and compel production of books, papers, records, and documents as he deems relevant to any inquiry or investigation pursuant to PAL 1279.
- Monitor implementation by the MTA of recommendations made by the Inspector General or other audit agencies.
- Do “all things necessary” to carry out the above functions, powers, and duties.

The Inspector General, who is an ex officio member of the New York State Public Transportation Safety Board (PTSB) with authority to vote on matters involving the operations of the MTA (as per Transportation Law 216[1]), is further authorized and directed to cooperate, consult, and coordinate with PTSB regarding any activity concerning the operation of the MTA.³ With respect to any accident on the facilities of the MTA, the primary responsibility for investigation belongs to PTSB, which is required to share its findings with the Inspector General (PAL 1279[5]).

The OIG is required to make annual public reports to the governor and members of the legislature (PAL 1279[6]).

The Inspector General may request from any office or agency of the State of New York or any of its political subdivisions, such cooperation, assistance, services, and data as will enable him to carry out his functions, powers, and duties, and they are authorized and directed to comply (PAL 1279[7]).

³ PTSB has a reciprocal obligation, imposed by statute to cooperate, consult, and coordinate with the MTA Inspector General. Transportation Law 219(2).

INTAKE, AUDIT, AND INVESTIGATIONS



INTAKE AND INTELLIGENCE

OIG encourages all interested persons, including MTA employees, outside contractors and members of the public, to report their concerns about the MTA and its agencies. Complaints or comments can be communicated to the Intake and Intelligence unit of our Investigations division by email (through our website), postal mail, personally, or by telephone. A Hotline number is publicized (1-800-682-4448 {MTA-IG4U}), staffed during business hours and available to take messages at other times. In addition to its other work, the unit also created the OIG's successful Visibility Campaign, which developed our website and introduced our slogan, "It's a Big System, Help Us Keep an Eye on It" featured here on our cover.

HOW TO CONTACT THE OFFICE OF THE MTA INSPECTOR GENERAL

Telephone: (212) 878-0000

24-Hour Complaint Hotline:
1-800-MTA-IG4U (1-800-682-4448)

Walk-In or Mail: Office of the MTA Inspector General
Two Penn Plaza, 5th Floor
New York, NY 10121

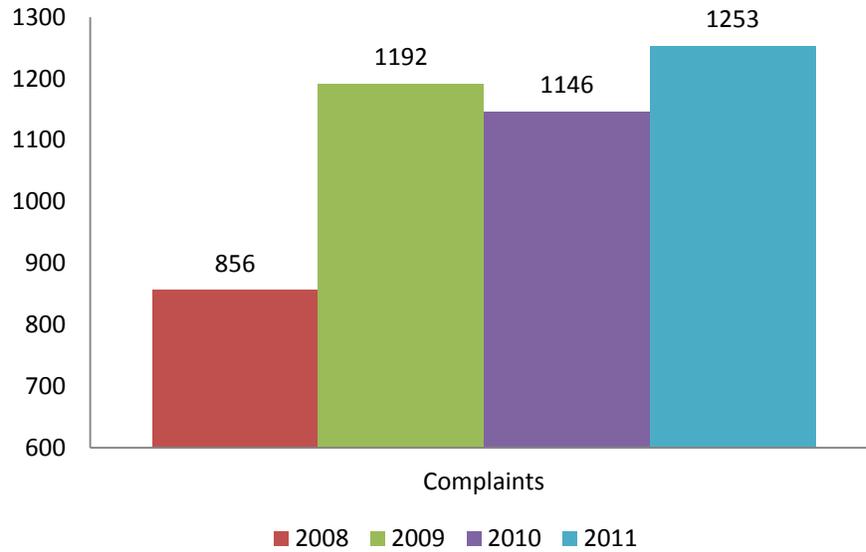
Website: www.mtaig.state.ny.us

The Intake and Intelligence unit's analysts perform the preliminary assessment of complaints. They also provide intelligence analysis and vendor research to assist OIG and law enforcement investigations, as well as in response to requests from MTA agencies. Among their duties, the analysts gather information from public records and other sources to detect associations, patterns, and trends indicative of systemic issues. This analysis makes complaint assessment more meaningful and furthers proactive case development and successful resolution of audits, investigations, and reviews.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INTAKE AND INTELLIGENCE

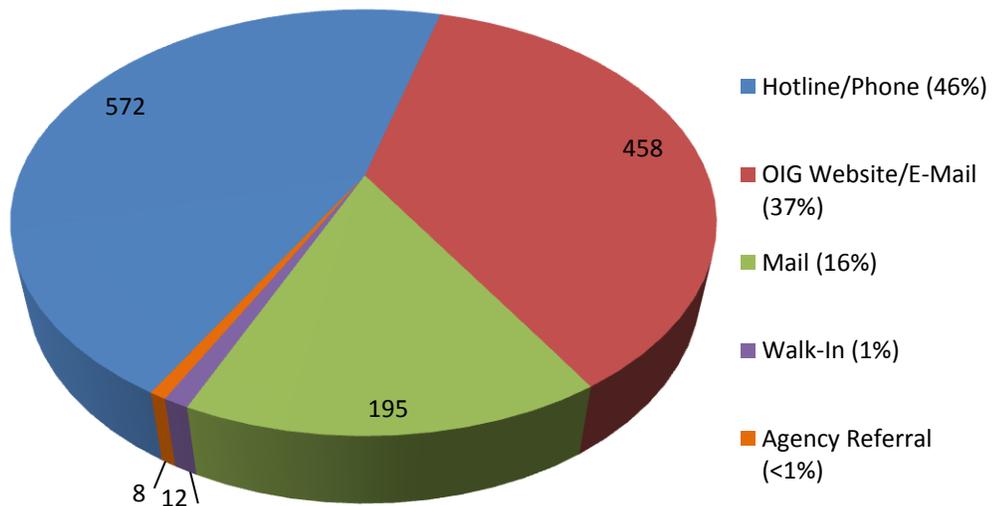
In 2011, the unit processed 1,253 complaints from individuals both inside and out of the MTA. As illustrated by the following chart (Figure 1), the number of complaints received and processed by the unit has increased by 46 percent during the past four years.

Figure 1: Number of Complaints (2008 – 2011)



As noted above, the unit receives these complaints in a variety of ways. The chart below (Figure 2) breaks down the complaints the OIG has received during the past year by the method in which the complaint was reported.

Figure 2: Complaints by Method of Reporting



~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INTAKE AND INTELLIGENCE

Each complaint is reviewed to assess how best to resolve it. Those complaints deemed appropriate for internal resolution, either alone or in partnership with law enforcement, are referred to the Audit or Investigations division to open an official case or for “preliminary review.”⁴ Other matters are retained for resolution by the unit itself. Complaints best handled by MTA agencies are referred accordingly and tracked as appropriate by the unit.

Customer Service

As other pages throughout this report make clear, the OIG takes a very broad approach to fulfilling its responsibilities and best serving the public, which ranges widely from conducting major investigations to helping resolve customer complaints on an individualized basis. This year, the unit got faster responses to customer complaints from the MTA agencies by directly calling agency personnel who can resolve the issues involved, rather than by sending complaint paperwork through a lengthy routing process. This year, we handled 154 complaints in this manner, a dramatic increase over the past two years; complainant feedback regarding this work has been overwhelmingly positive. This increase was largely concentrated in the following complaint areas:

- MetroCard refund processing;
- MetroCard vending machine issues;
- Access-a-Ride eligibility;
- Express bus ticketing issues; and
- Miscellaneous calls for help

The following are brief illustrations of some of the ways Intake staff worked to assist MTA customers this year:

- Complaint No. 11-26783: The complainant reported to our Hotline that the NYC Transit (Paratransit division) Access-a-Ride service (AAR) had failed to pick her up twice on the same day. As a result, she had to spend over \$100 out-of-pocket on another mode of transportation. The complainant contacted AAR, which refused to provide reimbursement. Intake staff contacted AAR on complainant’s behalf to determine why she was not picked up. After some additional follow up by Intake, AAR determined that it was at fault and reimbursed the complainant.
- Complaint No. 11-26266: The complainant returned her husband’s EZ Pass tag to Customer Service because he had recently died and she is legally blind. Although the clerk told her the balance remaining was \$64.21, she was later told that she was due only

⁴ Preliminary Review is a term and complaint category used to describe matters that are handled by the investigative unit or audit unit that do not result in the opening and assigning of an official investigation or audit.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INTAKE AND INTELLIGENCE

twenty-one cents. Complainant called the Hotline regarding the discrepancy. EZ Pass staff explained to us that the husband had a commuting plan and that the value of the unused trips reverted to EZ Pass. However, EZ Pass determined that under the unique circumstances presented by complainant, she would be refunded the full amount of the balance. The complainant stated she was grateful for the refund because it allowed her to purchase necessary medication.

- Complaint Number 11-25742: Complainant lost his prescription glasses at a Metro-North station. When he called Metro-North, he was told that the glasses were found and that he could retrieve them. However, when he went to retrieve the glasses, he was told the glasses were not there. Intake staff contacted the Lost & Found Manager at Metro-North who then conducted an investigation and recovered the glasses.

Intelligence Activities

Unit staff also provides a valuable intelligence-gathering function in support of the preliminary review process. Additionally, staff assists with proactive case development and other reviews assigned to the unit. In 2011, unit staff conducted 86 formal intelligence searches in support of OIG investigations, audits and reviews.

The unit conducts background checks for a variety of law enforcement agencies, including the NYPD, the NYC Department of Investigation, and the New York City Housing Department Inspector General. In 2011, the unit conducted 74 background checks and provided other assistance to those agencies. Moreover, the unit responded to approximately 381 information requests from the Lower Manhattan Construction Integrity Team, of which OIG is a member.

Vendor Integrity Screening

The Intake and Intelligence unit assists the MTA General Counsel by providing integrity reports regarding those vendors under consideration for MTA contract awards that require the approval of the MTA Chairman/CEO. Specifically, when an agency considers awarding a contract to a vendor with “Significant Adverse Information,” the OIG provides an additional in-depth integrity report that is an essential part of the MTA General Counsel’s decision-making process.

In 2008, we first reported on our initiative to strengthen vendor responsibility determinations across all MTA agencies. This undertaking, which was led by Intake and Intelligence and included representatives from all of these agencies, continued through 2009.

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In 2010, at the behest of and in collaboration with OIG, the Office of the MTA General Counsel completely revised the All-Agency Responsibility Guidelines and Vendor Questionnaire. At the same time, to promote thoroughness and uniformity, guidelines have been established, concepts clarified, and the process for a centralized background screening group formulated. When fully implemented, the centralization will have significant benefits for agency and vendor alike.

In 2011, OIG produced integrity reports for vendors being considered for contracts totaling nearly \$730 million.

AUDIT

The Audit division (or Audit) of the OIG conducts in-depth audits and reviews of a wide variety of business, performance, and service-related activities of MTA agencies. The auditors assess whether MTA operations are safe, efficient, and effective, and make recommendations for improvement wherever possible. All Audit reports undergo a quality assurance review to ensure that findings and conclusions have appropriate evidentiary support. The division is comprised of highly experienced auditors, most of whom have a graduate degree in a related field. Audit regularly consults with the MTA Auditor General and other audit and investigative units throughout federal, state, and local government.

In 2011, Audit completed a number of significant reports, reflecting analyses and evaluations designed to improve agency response to weather emergencies, escalator and elevator maintenance, design problems with capital projects and cost effectiveness of MTA operations. Further, where we determine that a particular condition requires an immediate agency alert, and that it does not seem prudent to await completion of a report or other final action, we address our concerns with appropriate agency staff, and alert the appropriate agency president to the issue(s) by means of a “flash letter.” Along with certain ongoing work, these reports and flash letters are described below. Audit also provided valuable analytical assistance for a wide range of investigations of agency employees and vendors. Finally, we have previewed here certain ongoing work of particular public interest.

REPORTS

Ineffective Use of Remote Monitoring Technology for New York City Transit Elevators and Escalators (MTA/OIG #2011-08)

Over the years, despite public concern, media attention, and demands for improvement by the MTA Board, elevators and escalators remain a serious problem. In the past, the variation of monitoring devices associated with different equipment made it challenging for NYC Transit to detect and diagnose outages in an efficient manner. Of particular concern were those incidents in which subway riders were literally trapped in elevators, forced to wait until NYC Transit personnel or emergency responders could come to their aid.

To address this continuing problem, in 2007 NYC Transit requested and received funding for the emergency procurement of a new automated remote monitoring system (Lift-Net) to improve its ability to maintain equipment and keep it in service. In this report we analyzed the effectiveness of the new system and its management. Our

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AUDIT
Reports, Continued

findings raised fundamental questions about the system's performance, the reliability of NYC Transit's maintenance records, and the overall effectiveness of NYC Transit's management of the elevator and escalator program.

Responsibility for maintaining, repairing and tracking the performance of all elevator, escalator and power walk equipment rests with the NYC Transit Elevator and Escalator department (E&E). The new Lift-Net system was designed to provide E&E with consistent and reliable information that would enable maintenance staff to address equipment outages in a timely manner and to diagnose problems effectively. NYC Transit augmented the system in 2009 with the addition of entrapment relays designed to automatically alert E&E staff to passengers trapped inside elevators.

Our review found that E&E management had failed to integrate and take full advantage of Lift-Net's capabilities, missing the opportunity to more efficiently manage its response to equipment outages. Regarding the critical issue of entrapments, implementation of the relays had not been successful and E&E had been slow to respond to technical problems. The elevator entrapment relays, added to the Lift-Net system, transmitted thousands of false warnings. In July 2010 alone, more than 7,000 warnings were transmitted for elevators that had experienced 60 confirmed entrapments. Because of the large number of false warnings, E&E's Control Desk made the decision to ignore all entrapment warnings received from Lift-Net. Rather, it waited until either NYC Transit personnel or a call from a subway rider confirmed that passengers are trapped before notifying maintenance staff to respond—exactly the same approach used by NYC Transit prior to the installation of the relays.

OIG made a series of recommendations to help identify and eliminate deficiencies in the remote monitoring system, utilize the system's capabilities more effectively, and resolve problems with false entrapment warnings. The president of NYC Transit acknowledged that our report "highlighted numerous issues that require immediate attention" and that the agency views our findings and recommendations as another avenue to improve customer experience and overall station environment.

The president has since noted that E&E underwent a reorganization that establishes a direct reporting relationship to the vice president of maintenance. He also reported that the agency has introduced a variety of measures intended to tighten administrative controls on the performance of maintenance in the field, improve the efficient use of Lift-Net, and train department staff to better manage both field and technical information. The president acknowledged that "elevator and escalator issues are a top priority and that our management of these assets must improve."

MTA and NYC Transit Have Not Fully Managed Their Responsibilities Regarding Privately Owned Elevators, Escalators, and Stairways

(MTA/OIG #2011-12)

NYC Transit's vast subway system comprises 468 stations and hundreds of elevators, escalators, and stairways that allow access into and out of the stations. With thousands of riders, especially the elderly and those who suffer physical disabilities, relying upon these elevators and escalators for their daily commute, ensuring that this equipment is well maintained and kept in service is a crucial management responsibility.

While most of these subway system access points are maintained by the agency's Elevator and Escalator department, there are 33 privately-owned and maintained elevators and escalators serving 13 stations throughout NYC Transit in Manhattan and at one location in Queens. The equipment—23 escalators and 10 elevators—helps move passengers at some of the busiest stations, including Columbus Circle, Times Square, Union Square, and at Grand Central Terminal. In addition, there are approximately 200 stairways in the system at heavily used stations such as Rockefeller Center, Penn Station, and others that are also owned and maintained by private building owners.

The owners of the privately maintained equipment and stairways, referred to by NYC Transit as “out of system property,” are contractually responsible to operate and maintain the equipment under easement agreements with NYC Transit that ensure public access to the subways. In return, owners received special permits from New York City for additional building levels, increased floor space, or other benefits when their buildings were first constructed or renovated.

While private operators are contractually responsible under the easement agreements for maintaining out of system property, MTA and NYC Transit are responsible for ensuring compliance with these agreements. Several NYC Transit departments—the Escalator and Elevator Department, Station Environment Department, and the NYC Transit Department of Law, as well as the MTA Real Estate Department and MTA General Counsel, all have roles regarding out of system property.

OIG found, however, that no one individual or department within the MTA or NYC Transit had overall responsibility for ensuring compliance with easement agreements. Each seemed to minimize its responsibility and role. This apparent void in leadership and oversight led to inadequate agency practices and procedures, including the lack of any easement enforcement process. For example, there were no procedures establishing who should notify owners (or when) that they are in violation of their obligations to properly maintain their equipment—a legal requirement for enforcing the easement agreements.

The president of NYC Transit, responding on behalf of both that agency and the MTA, essentially agreed with all of our findings and recommendations, but the agencies stopped short of assigning overall responsibility for privately maintained escalators, elevators, and stairways to one lead department. MTA Legal is now drafting a Memorandum of Understanding that will outline each department's role in returning equipment back to public use. The document is scheduled for completion by June 2012. MTA and NYC Transit agreed that they needed to utilize "every reasonable means" to ensure that out of system equipment failures are addressed "in a timely and effective manner." Given the multiplicity of departments involved in the management of this equipment, the agencies also agreed that they needed "to more clearly delineate the responsibilities of each" and that there would be "appropriate coordination and consultation" among them.

In the last analysis, of course, the organizational strategy by which the MTA and NYC Transit accomplish their joint responsibility to the riders is less important than the responsibility itself—to expeditiously utilize every reasonable means to ensure that out of system equipment and property is restored to service as quickly as possible. Importantly, the agencies agree. We will continue to monitor their progress toward fulfilling this commitment.

Misclassification of Design Errors and Omissions at NYC Transit (MTA/OIG #2011-15)

Once a contract for a capital construction project has been agreed to by NYC Transit and a contractor, any change in the scope of the contract must be processed as an Additional Work Order (AWO, also called "change order"). AWOs can add significantly to the cost of construction primarily because the price of the work is obtained through negotiation with the existing contractor only, rather than through a competitive procurement process. Typically, NYC Transit will have little leverage in these negotiations because it needs the work to be done, and alternatives to working with the existing contractor will likely be even more costly. NYC Transit's Department of Capital Program Management (CPM) spent \$344 million on AWOs for projects closed between years 2001-2010.

Some AWOs are unavoidable, as when work is needed to address unforeseeable conditions or changes in technical standards that arise after the contract was awarded. On the other hand, AWOs caused by design errors and omissions are clearly avoidable and should not be repeated in future contracts. In order to prevent the repetition of mistakes CPM construction managers must accurately classify additional work caused by design errors and omissions so that other managers can initiate a "lessons-learned" procedure as to what went wrong.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

AUDIT

Reports, Continued

While only 59 of the total 1,422 AWOs (4 percent) issued by NYC Transit in 2009 and 2010 were classified by managers as resulting from a design error or omission, our analysis of 46 other AWOs found that 11 (24 percent) were misclassified as caused by a field condition or user request when they were actually caused by an error or omission during design. Furthermore, we learned that some CPM construction managers were reluctant to properly classify error and omission AWOs because they were hesitant to confront CPM designers, with whom they may work on future projects, or because of the increase in paperwork that error and omission entail. Thus, our findings indicated that a significant number of design error and omission AWOs were misclassified, and that NYC Transit was at risk of repeating design mistakes. In this report, the OIG made recommendations to improve the ability of NYC Transit to correctly identify and therefore learn from design errors and omissions.

NYC Transit accepted all of our recommendations and is in the process of modifying its procedures to comply with them. Once the procedures are finalized, the agency plans to train its employees and then implement the procedural changes. Most important, NYC Transit agrees that it must correctly categorize design errors and omissions. As such, we will continue to monitor its progress toward fulfilling this commitment.

NYC Transit's Response to December 2010 Blizzard
(MTA/OIG #2011-07)

On December 26, 2010 and the early hours of December 27, over two feet of snow fell on the New York metropolitan area accompanied by high winds. Transit service was dramatically curtailed on both buses and subways. Approximately 650 buses got stuck in the snow and some 500 people were stranded on trains overnight. OIG initiated a review in the days immediately after the storm to determine whether and when plans were put into action, and whether any such plans were adequate.

We designed our review to augment, not duplicate, the extensive internal review then underway by MTA and NYC Transit. During our respective efforts, we shared our findings and recommendations with agency management, which subsequently accepted all of our recommendations and is in various stages of implementing them. Some highlights of this work included:

- The NYC Transit Department of Buses (Buses) had no plan for providing assistance to passengers taking shelter in snowbound buses. OIG recommended that Buses notify New York City Police Department and/or Fire Department of any stranded passengers in need of assistance and monitor the situation to ensure that assistance is provided. Buses agreed and created the role of Customer Advocate, whose primary responsibility during storms is to ensure the welfare of both customers and operators aboard stuck buses.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

AUDIT

Reports, Continued

- While the NYC Transit Bus Command Center (BCC) had the lead role under the previous Storm Plan in directing and dispatching all equipment involved in fighting storms, the Road Operations division actually led the efforts to rescue snowbound buses. This division of labor was compromised by inefficient communication. For example, on several occasions stranded buses were extricated, but uninformed BCC storm coordinators would nevertheless dispatch personnel to the same site. In accordance with our recommendation, Road Operations will now be responsible for both tracking and rescue.
- In the early morning hours of December 27, Buses' radio system failed, almost completely shutting down communications among the BCC, bus operators, and Road Operations personnel. Nevertheless, some bus operators stranded during the blizzard revealed to OIG that they did not use their personal cell phone to communicate their status during this emergency, because they believed that such use was prohibited by NYC transit policy under any conditions.
- To ensure that back-up communication is available, upon our recommendation Buses drafted a bulletin directing its operators, in the event of an emergency and radio system failure, to secure the bus and use any available phone, including their personal cell phone, to communicate the problem.
- The Assistant General Managers (AGMs) responsible for three south Brooklyn depots seriously affected by the storm told us that they were aware that a large number of buses that left their depots were becoming snowbound. Yet all three said that they continued to dispatch vehicles because they lacked authority to make any adjustments to service—even to keep additional buses from certainly getting stuck. Buses agreed with our concerns about how isolated AGMs are from decision-making during emergencies. Accordingly, it reorganized its emergency protocols to require frequent conferences calls with AGMs regarding ongoing conditions.
- NYC Transit agreed to improve the quality and timeliness of service information based on our findings of significant and frequent communications failures, including the following:
 - It took between four and 24 hours to post information about suspended bus routes on the MTA website.
 - It took between two and six hours for information on fully or partially suspended subway lines to be posted on the MTA website.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~

AUDIT

Reports, Continued

- There were significant inconsistencies between the information contained in NYC Transit's internal records and the information provided to the public.
- NYC Transit had not been monitoring and analyzing how well information flows among its own staff, nor assessing whether and to what extent it is conveying clear, accurate, and timely information to the riders.

FLASH LETTERS

LIRR Crew Book Efficiency

(MTA Inspector General Flash Letters dated May 10, 2011; June 30, 2011; December 2, 2011)

The OIG has an ongoing initiative to recommend efficiency changes to the LIRR Crew Book, which contains the daily assigned train runs for all LIRR passenger crews. To date we have issued three letters with recommendations that, if implemented, could collectively save LIRR approximately \$1.2 million annually.

Examples of these recommendations include:

- Limiting the use of assistant conductors on certain empty trains (sometimes called "equipment trains") could save over \$200,000. A primary function of an assistant conductor is to collect tickets from passengers on a train run. Because this function is necessarily absent on any train running empty, it is cost effective to keep assistant conductors off empty trains making their first or last run of the day. Therefore, we proposed that the LIRR eliminate the assistant conductor from seven crews making their last scheduled run for the day, as well as four crews making their first.
- Changing the reporting and release locations for over 75 assistant conductors from yard locations to stations could result in over \$450,000 in annual savings. The change would only be made for assistant conductors who are already scheduled for overtime and will reduce it by 25 to 60 minutes daily.
- Revising the schedules of certain passenger crews that operate during the evening peak period could save an estimated \$300,000 to \$500,000 annually. Three of the crews frequently arrived late into Penn Station on empty passenger trains and therefore were unable to make their next assigned train runs. Consequently, other crews were "swapped in" on an unplanned basis to replace them, frequently leading to other swaps, all of which resulted in avoidable overtime and "penalty payments," as provided in the applicable collective bargaining agreement. During our review we found that by rearranging the train runs of the three late crews with

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Flash Letters, Continued

three other crews, more down-time between runs could be provided, giving the late arriving crews greater flexibility to make their next run on schedule. LIRR officials from the Service Planning and Transportation departments have agreed with our recommended rearrangements and have included them in a revision to the crew book.

LIRR has implemented some of our recommendations and is currently analyzing the remainder.

INVESTIGATIVE AND GENERAL SUPPORT BY AUDIT

OIG auditors assist outside law enforcement agencies and the OIG Investigations division, including the OIG Intake and Intelligence unit, whenever the auditors' subject matter expertise or analytical skills can further an investigation. Providing this assistance continues to be a growing share of the auditors' workload and significantly benefits the Audit and Investigations divisions as well as the outside agencies.

For example, throughout 2011, auditors provided additional analysis and background information in support of the investigation by the OIG and the ensuing prosecution by the Manhattan District Attorney of NYC Transit signal maintainers and supervisors who were caught by the OIG creating false inspection records. Auditors joined with OIG investigators on this case to conduct new interviews of additional suspects. Similarly, auditors assisted the Office of the United States Attorney for the Southern District of New York and the federal Railroad Retirement Board (RRB) in their investigation of retired LIRR employees for fraudulently receiving occupational disability pensions from the RRB. In furtherance of a multi-year effort, OIG auditors continue to supply the RRB with the necessary data and analysis for its cases.

Additionally, in 2011 OIG auditors analyzed the bidding history of contractors who were the subject of allegations of wrongdoing; accompanied Metro-North personnel on their track inspection tours; statistically analyzed concrete-testing records to help prove falsehoods in connection with criminal investigations; and evaluated change order submissions on major construction contracts for evidence of procedural irregularities. These auditors testified at grand jury hearings on the results of their analyses.

Further, OIG auditors joined with OIG lawyers and investigators in a proactive initiative to deter and detect procurement fraud at the MTA agencies. To that end, auditors have focused on significantly increasing the OIG's capacity to analyze large amounts of procurement data for suspicious patterns. Large databases of bidders and contracts have been compiled and sophisticated software obtained to use in "data-mining" for potential investigative targets. We will continue to actively pursue this initiative during 2012.

FOLLOW-UP ON RECOMMENDATIONS FROM PREVIOUS REPORTS

As noted earlier, Public Authorities Law §1279(6) requires that the MTA give quarterly reports to the MTA Inspector General (with copies to the Governor and Legislature) outlining the status of each of the recommendations made by the Inspector General in his final reports. Also, Public Authorities Law §1279(4)(f) empowers the OIG to monitor MTA implementation of OIG recommendations. While there are a few older recommendations that we continue to monitor until they are completely implemented, since 2008 the MTA agencies have been far more responsive to OIG recommendations and now implement most in a timely fashion. Below are some highlights of what we have found this year.

Governance Assessment of MTA Capital Program Mega Projects (MTA/OIG #2010-04)

The MTA Board uses its Capital Program Oversight Committee (CPOC) to monitor implementation of its five-year capital programs. To help CPOC members understand the often technical subject matter of capital projects, CPOC utilizes an independent engineering consultant (IEC). In this 2010 report, OIG found that while the governance structure in place was essentially sound, improvement could be made in how the MTA Board and executive management provide effective oversight.

The OIG made twelve recommendations, all of which the MTA accepted during 2010 and implemented by the first quarter of 2011. In response to the report, the MTA Chairman directed CPOC to revisit the IEC's resource allocation and develop a risk-based approach to oversight. For its part, MTA management focused the IEC on high risk areas, incorporated greater accountability into the reporting process, and helped develop a new annual plan identifying the work to be addressed by both the independent engineers and CPOC itself. The IEC will report on agency performance against expectations for the capital program. The IEC will receive annual evaluations based on feedback from the Chairman and Chairs of each operating agency.

PREVIEW OF SELECTED 2011 ONGOING WORK

Productivity Review of Field Crews/Personnel

Past OIG work across the various MTA agencies has identified millions of dollars in lost productivity by track workers, excessive overtime paid to maintenance workers, and costly scheduling practices for crews inspecting tracks and signals. In an initiative begun in 2011 and continuing in 2012, OIG auditors are focusing on the productivity of employees of NYC Transit, LIRR, and Metro-North who work outside of facilities in gangs, pairs or individually, to maintain and inspect tracks, signals, stations, and other agency facilities. Unlike those performing particular duties each day at the same facility,

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Preview of Selected 2011 Ongoing Work, Continued

within constant view of their supervisors, these workers might be assigned to multiple tasks at various locations over a wide area throughout any given day. Monitoring the performance and whereabouts of such workers is challenging.

OIG experiences gained through past investigations indicate that these workers are susceptible to “time stealing” and low productivity. In the 2010 OIG Annual Report, the Investigations division reported that two Metro-North Track Inspectors were spending several hours of their work day at home without authorization. Surveillance of these individuals by OIG investigators confirmed that one of them spent as much as four hours a day at home while claiming to be at work. Auditors are assessing the supervision practices over field crews at both railroads in order to identify weaknesses in the oversight practices and develop best practices that should be shared throughout the system. Deployment schedules, documentation of performance, and supervisory practices will be assessed to determine whether: 1) controls are in place to verify work activity, and 2) work is scheduled in a cost-effective manner. If auditors have reason to believe that work is being claimed, but not performed, they will coordinate with our investigators to take appropriate follow-up action.

Capital Program Reviews

Because millions of dollars are spent annually by agencies on construction contract Additional Work Orders, these AWOs continue to be a primary area of focus for our Audit division. Earlier in this Annual Report, we discussed report MTA/OIG #2011-15 entitled “Misclassification of Design Errors and Omissions at NYC Transit,” in which we showed how the agency needs to learn from its mistakes in order to avoid repeating them and incurring even higher construction costs.

Audit continues to review specific contract increases and is currently studying some of the reasons for sizeable AWOs on NYC Transit construction contracts. NYC Transit designers currently rely on agency “condition surveys” for scoping work needed at stations or their environs. These surveys, however, are conducted for use by the maintenance department to make minor repairs and may not be sufficient for larger, structural jobs supervised by Capital Program Management. We are determining whether reliance on these condition surveys is one reason for unnecessary AWOs.

Audit also continues to select individual AWOs as samples to assess change order negotiation, pricing, justification, and accountability. Our assessment makes use of our staff engineer and personnel with construction auditing expertise. When concerns develop from the sampling about a specific AWO or construction project, or about internal controls in general, our auditors pursue a larger review as appropriate.

September 2011 LIRR Lightning Disruption

A lightning strike created a power surge that disabled the signal system west of the Jamaica railroad station, during the evening rush on September 29, 2011. Several hours later, a LIRR worker inadvertently disabled the signal system east of that station. Nearly twelve hours after the strike, LIRR restored full service, ending a disruption that affected tens of thousands of commuters. The LIRR, its signal system designer, and an LIRR consultant, promptly commenced an investigation to determine how the signals were disabled.

Simultaneously, the Office of the MTA Inspector began a review of the circumstances of the lightning strike and its aftermath, including the investigation conducted by LIRR and its consultants, to be sure that the railroad and its consultants identified and carefully analyzed all of the critical factors contributing to the outage and produced an effective action plan. Furthermore, our current review regarding the lightning strike provided an opportunity for us to revisit a review that we performed with LIRR in 2007; our purpose now being to determine whether the LIRR improved emergency staffing and communication.

As of this writing, we issued a report finding that the LIRR and its signal system designer share responsibility for the crippling effects of the power surge and its aftermath. Most important, we found that the power outage and subsequent delay resulted from its contractor's design limitations and the railroad's installation deficiencies, the critical deficiency being the use of a single wrong connector to add a remote monitor to the system. We also made a series of recommendations to LIRR, including confirming compatibility with the designer prior to installing any signal modifications and improving its quality assurance and quality control. Further, we recommended that the MTA request its own independent engineering consultant to review the upgrades planned under the agreement between LIRR and its contractor to confirm that all necessary steps are being taken to provide the appropriate level of lightning protection. Regarding emergency staffing and communication, we recommended that LIRR determine analytically its additional staffing needs; include that number in its Emergency Action Plan; devise a cost effective means of producing the requisite staff in emergencies; and further develop and refine its protocols to facilitate the dissemination of appropriate information to passengers on stranded or standing trains. Both LIRR and the MTA accepted our recommendations and began to implement them.

INVESTIGATIONS

The Investigations division (or Investigations) examines allegations of criminality, fraud, waste and abuse, as well as safety, service, and management deficiencies. The division's priorities are the detection and deterrence of fraud and the protection of MTA assets. In accordance with our statutory powers and duties, matters are referred to appropriate law enforcement and other governmental officials for further investigation, in which the division routinely participates, and/or for criminal or civil enforcement.

Investigations is comprised of experienced investigators, forensic experts, and attorneys who work together on investigations, with additional subject matter expertise and analytical support by OIG Audit. Aside from the expertise of the staff and the Inspector General's statutorily authorized "full and unrestricted access" to all information and materials of the MTA, Investigations has a host of additional tools available to it. These include the statutory authority to subpoena witnesses, administer oaths, take testimony, and compel the production of records and other documents relevant to any inquiry or investigation.

Within the Investigations division there is a specialized Construction Fraud unit (CFU), established by the Inspector General in 2008 and consisting of attorneys, investigators, forensic accountants and analysts, and an engineer. CFU concentrates on detecting frauds by contractors engaged in the construction, rehabilitation, and maintenance of MTA facilities. We highlight CFU's substantial efforts to reduce fraud, both in terms of its investigative work with prosecutors, as well as its oversight and training regarding construction fraud in general and federal "Stimulus" funding in particular. Also within the division is the Intake and Intelligence unit, which is at the front lines of receiving complaints from the public (see page 7).

The division is engaged in numerous ongoing criminal investigations in various areas, including suspect construction practices, procurement-related fraud, prevailing wage and other labor law violations, disadvantaged and minority business enterprise fraud, employee theft of time and property; double billing; overbilling; and pension fraud. Below is a sampling of our numerous investigations involving the sharing of information and evidence with various federal, state, and local law enforcement agencies.

SELECTED INVESTIGATIONS REFERRED TO PROSECUTORS

Federal Investigation of DBE Fraud; Contractor Pays \$19.6 Million

OIG's Construction Fraud unit initiated an investigation into disadvantaged business enterprise fraud by a prime contractor on eight major projects involving MTA agencies, including Capital Construction, NYC Transit, and Metro-North. As a result of this investigation, the OIG determined that the prime contractor and various co-conspirators fraudulently applied for and received \$19.6 million in DBE credit for subcontracts covering a variety of services. The scheme used the supposed DBE firms as "pass-through" companies that purported to provide these goods and services that were actually provided by non-DBE firms.

CFU brought the matter to the United States Attorney for the Southern District of New York to continue the investigation jointly. The prime contractor subsequently entered into a non-prosecution agreement and agreed to make penalty payments totaling \$19.6 million. Of that, \$9.8 million was paid to the MTA and \$9.8 million to the federal government. The two principals of one pass-through DBE company used by the prime contractor pled guilty to mail fraud in connection with this scheme. Their plea agreements provide for a civil forfeiture of \$188,000.

The MTA sought the OIG's advice on the most appropriate use of this \$9.8 million recovery. After consultation with MTA senior management, it was mutually agreed that approximately one-third of this money would be re-invested in the MTA's Small Business Mentoring Program. Many of the small construction firms participating in that program could qualify as DBEs (as well as Minority and/or Women-Owned business enterprises), and thus this investment should deepen the pool of qualified firms available for MTA projects. The remaining two-thirds of the recovery will be used by the MTA to retain private monitoring firms on the MTA's largest projects. It was through the use of such monitoring firms that the initial evidence of DBE fraud was uncovered in this case and brought to our attention, resulting in an in-depth OIG investigation. The oversight of monitoring firms, in conjunction with the OIG's efforts, will help deter and detect future frauds against the MTA.

LIRR Retiree Occupational Disability Fraud

Since 2009, the OIG worked jointly with the Office of the United States Attorney, the New York State Attorney General, the Federal Bureau of Investigations, and the Railroad Retirement Board Inspector General, in a criminal investigation of occupational disability fraud allegedly committed by Long Island Rail Road retirees. In October 2011, this joint effort culminated in charges against 11 defendants for allegedly participating in a massive fraud scheme from 1998 to the present in which LIRR workers claimed to be disabled upon early retirement so that they could receive extra pension benefits to which

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they were not entitled. Those charged included two doctors, an office manager, two facilitators, and seven LIRR retirees (including one of the charged facilitators).

Fraudulent Billing of Access-A-Ride Program

In January 2012, a car service pleaded guilty in Staten Island to Grand Larceny in the Third Degree and will pay \$200,000 in restitution and forfeiture for its submission of fraudulent bills to NYC Transit's Paratransit division, which runs the Access-A-Ride Program.

The guilty plea and recovery began with a report to the OIG by alert Paratransit staffers, who spotted "red flags" in documents evidencing a pattern of suspicious activity. A combination of surveillance and analysis of records enabled investigators from the OIG and the Office of the Richmond County District Attorney to prove that the car service was submitting invoices for an inordinate number of daily trips, in some cases as many as ten in one day, that were never taken by its Access-A-Ride customers. Indeed, some of these "customers" turned out to be the drivers themselves.

Construction/Material Testing Company

The OIG continued its work with an investigative task force led by the Office of the New York County District Attorney. Other partners working with us include the New York City Department of Investigation and other New York City and New York State agencies, as well as the Port Authority of NY and NJ Inspector General. In the past few years, the efforts of the task force resulted in the indictments of two construction-material testing companies and eight of their employees, for various crimes related to the testing of building materials. Last year, a jury convicted one of the testing companies, its president and another principal, of Enterprise Corruption and other crimes. The principals were sentenced to very lengthy prison terms, and the president and the company were further ordered to pay approximately \$2 million in total restitution.

In 2011, the task force's continuing efforts resulted in the indictment of a third construction-material testing company, its president, two laboratory directors, two consulting engineers, and an inspector. The indictment charged the crimes of Enterprise Corruption, Scheme to Defraud in the First Degree, Offering a False Instrument for Filing in the First Degree and Falsifying Business Records in the First Degree. As it relates to the MTA, the indictment alleges that the construction materials testing company engaged in a criminal scheme by falsifying concrete mix design reports and compressive strength tests on projects of Bridges and Tunnels, NYC Transit, Capital Construction, Metro-North and LIRR. The indictment also alleges that the company fraudulently obtained its disadvantaged business enterprise certification by hiding and/or undervaluing assets. OIG followed up on the indictment by working with the MTA Office of Construction Oversight and all of the affected agencies as part of the lessons-learned process.

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One of the indicted laboratory directors was a professional engineer employed by NYC Transit. That defendant is charged with affixing both his Professional Engineer stamp and his signature stamp (or permitting them to be affixed) to fraudulent concrete testing results that were submitted to numerous public and private entities, including MTA constituent agencies.

In addition, the OIG determined that the engineer, in his Pre-Employment Application Background Verification Questionnaire for NYC Transit in 2008, failed to disclose his ongoing employment as a laboratory director with the testing company beginning in 2007; and failed to obtain dual employment authorization in a timely manner. We also determined that the engineer provided false answers to questions in sworn interviews with OIG.

The professional engineer was suspended without pay pending resolution of the criminal charges.

DBE Supplier Indicted on Mail Fraud Charge

OIG's Construction Fraud unit conducted an investigation jointly with the United States Department of Transportation Inspector General, The Port Authority of NY and NJ Inspector General and the New York State Department of Transportation concerning a DBE construction materials-supplier who allegedly functioned as a pass-through for prime contractors. As a result of the investigation, the Office of United States Attorney for the Southern District of New York obtained an indictment against the principal of the pass-through supplier charging mail fraud relating to a New York State Department of Transportation project. That prosecution is now pending.

Theft of NYC Transit Property by Employee

In November 2011, following a six-month investigation by the OIG, a NYC Transit track equipment maintainer was arrested and charged by the Office of the Bronx District Attorney with several counts of Grand Larceny, all felonies, as well as Petit Larceny and Official Misconduct. The complaint alleged that he stole more than \$6,000 worth of parts and other materials, including diesel fuel, from NYC Transit during the past year. It was further alleged that he sold some of the material for cash to a scrap yard in Stroudsburg, Pennsylvania, while using other parts to assemble a flat-bed trailer for himself. This case is currently pending.

Theft from Construction Field Office

The field engineer on weekend duty at a NYC Transit construction field office in Queens County reported a burglary "by persons unknown." According to the engineer's report, the "burglar" allegedly stole property including records and two computers (one

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of which was the engineer's personal laptop). He told officers from the New York City Police Department that he discovered the burglary upon returning from a construction site in the early morning.

During the course of its investigation, the Construction Fraud unit discovered video evidence recorded by a security camera at a business office nearby. The video footage revealed that it was the field engineer, not an unknown burglar, who had stolen the property from the office. The engineer had backed his car up to the door of the field office, placed the items in his trunk, drove away and returned a short time thereafter. Later on, he went to the construction site and returned, in his words, to "discover" the burglary.

Based on this evidence, the engineer was arrested and charged by the Office of the Queens County District Attorney with Grand Larceny in the Fourth Degree, a class E felony. He pleaded guilty to the charge and returned the records and stolen computer, which he had thrown in a swamp. Although the computer still functioned, the project records were damaged. The OIG retained a forensic specialist to restore these important records to usable form.

As part of the plea agreement, the defendant resigned from NYC Transit. Aspects of this investigation are still ongoing.

Employee Theft of NYC Transit Property

An OIG investigation established that a NYC Transit employee had stolen numerous items from NYC Transit, having an aggregate value in excess of three thousand dollars. We referred our findings to the Office of the Suffolk County District Attorney for prosecution. The employee was arrested and charged with Grand Larceny in the 3rd Degree and Criminal Possession of Stolen Property in the 3rd degree, both class D felonies.

NYC Transit has suspended the employee while the charges are pending.

OTHER SELECTED INVESTIGATIONS

Overbilling by Electrical Supply Company (MTA/OIG #2011-04)

OIG received an anonymous complaint that a LIRR electrical supply vendor was overcharging for products on its invoices. Our investigation substantiated the allegation and identified overcharges of \$47,264 beginning in August 2008 through February 2009. The contracts under which these products were purchased provided that pricing would be based on an electronic database of manufacturer or commodity prices commonly known

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Other Selected Investigations, Continued

as “Tra-Ser,” and then discounted at a contractually agreed-upon rate. Notably, these contracts did not require that the vendor provide documentation to LIRR of the Tra-Ser price, and LIRR could not independently verify that price because it does not subscribe to the service.

OIG collected and analyzed 122 purchase orders submitted during the period in issue and used NYC Transit’s Tra-Ser subscription to verify the actual product prices. Our analysis revealed that during this period LIRR paid inflated prices for 41 percent of the products, and on 55 percent of the products the railroad received a lower discount than contractually required.

OIG recommended that LIRR review all of its electrical supply vendor purchase orders to identify other billing irregularities, and seek reimbursement for all overcharges. OIG also recommended that LIRR conduct a hearing to determine if this vendor is “responsible.” Finally, OIG recommended that LIRR require the vendor to provide documentation of the trade price and detail the discounts in its invoice, and that LIRR obtain a subscription to the electronic price database in order to independently verify prices. LIRR accepted all of our recommendations.

LIRR reports that it is pursuing restitution and has not used the vendor since issuance of our report.

NYC Transit General Superintendent – Vendor Relationship
(MTA/OIG #2011-03)

The chief security officer for the NYC Transit Department of Buses referred to OIG a complaint made by a NYC Transit employee alleging that a Buses general superintendent had a relationship with the principals of a replacement-parts vendor who supplied parts to the shop where the general superintendent worked. Prior to referral, the general superintendent’s supervisor confronted him with the allegation and he denied having any relationship to the principals. As of August 2010, the vendor had been paid \$1.8 million for products sold to NYC Transit.

During its investigation, OIG found significant financial and familial connections between the general superintendent and the vendor including:

- The vendor’s president is married to the nephew of the general superintendent’s wife.
- The vendor rented a United States Post Office Box from which the general superintendent was authorized to collect mail.
- The husband of the vendor’s president had been given power of attorney over one of the general superintendent’s bank accounts and was a signatory on three

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Other Selected Investigations, Continued

other accounts associated with rental properties that the general superintendent owns in the Bronx. Notably, the nephew was removed as a signatory on those accounts at about the same time that the allegations were reported to NYC Transit.

- Both the general superintendent and the nephew shared an address with the principal of the vendor's only distributor.
- The general superintendent had played a role in introducing the vendor to NYC Transit for sale of bus replacement parts.

Based on the OIG findings evidencing a profound conflict of interest and lack of credibility, NYC Transit conducted disciplinary proceedings and dismissed the general superintendent. Both firms have been barred from being awarded MTA contracts for at least three years.

Bus Driver Improperly Off-Route
(MTA/OIG #2011-10)

OIG received a complaint that on three different occasions, while “dead-heading” an express bus (i.e., returning without passengers) to the Charleston Depot, a NYC Transit bus driver left the Staten Island Expressway and parked off-route for approximately half an hour. The complainant alleged that on each occasion, just before the bus restarted, a woman exited the bus, walked to a car parked nearby and drove away. The complainant provided OIG with a video recording of his observations that corroborated the allegation.

Through investigation, the OIG established both the identity of the driver and that he operated the bus on all three occasions. We examined the driver's time records and learned that he claimed to have been stuck in traffic on two of those occasions for a total of approximately two hours. We also learned that the driver had been suspended 14 times in the five years that he worked for NYC Transit. When we interviewed the driver he admitted operating his bus off-route and allowing a friend to enter the bus while he stopped. He also admitted submitting two overtime slips claiming he was stuck in traffic when he purposely stopped off-route.

Based on the OIG findings and recommendation NYC Transit terminated the driver. The termination was upheld on appeal to an arbitrator.

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Counterfeit Bearings

The NYC Transit Materiel division referred a matter to the OIG based on its belief that a distributor was not supplying Original Equipment Manufacturer (OEM) parts for movable contact bearings used in bus doors. Our investigation established that the distributor had indeed supplied counterfeit bearings but there was insufficient evidence to charge a crime. Following a responsibility hearing, and in the interests of safety, NYC Transit declared the firm to be “under suspension.” In addition, the firm reimbursed NYC Transit the amount NYC Transit paid for the counterfeit bearings.

Theft of “Time” by Falsifying Attendance Records (MTA/OIG #2011-05)

OIG investigated a complaint that the director of standards and compliance for the Paratransit division of NYC Transit stole “time” from the agency by falsifying his time and attendance records. It was further alleged that the director parked his assigned agency car in Staten Island on his way home to New Jersey, and that NYC Transit pays the commuting tolls for his private vehicle.

Our investigation determined that the director claimed to be at work when he was actually in Florida for four days attending the NFL Super Bowl, and that on at least 14 other occasions he falsified his records to reflect that he worked in excess of the required eight hours when he actually worked even less hours than the eight required. As to the allegations regarding his vehicle usage, we determined that his conduct was in conformance with Paratransit policy and that he used his personal EZ Pass to travel to New Jersey.

We recommended that the director be disciplined for falsifying his records. We also recommended that Paratransit install GPS devices in its vehicles and activate the tracking feature during work hours on all Nextel phones assigned to field personnel.

In response to our report, the agency instituted disciplinary action against the employee, who resigned effective June 25, 2011; installed GPS devices in the carrier’s road supervision vehicles; and is evaluating the costs and benefits of installing such devices in management vehicles and of activating the Nextel tracking feature.

Falsification of Worker Compensation Claim (MTA/OIG #2011-06)

An OIG investigation determined that a bus dispatcher falsified a worker compensation claim by misrepresenting how he sustained a knee injury. Specifically, the dispatcher claimed, at the bus superintendent’s direction, that he injured his knee while walking down the stairs. However, we established that the dispatcher actually injured his

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knee while engaging in “horseplay” in the office of the superintendent. The dispatcher was demoted and reimbursed NYC Transit the full amount of the undeserved compensation benefits he received. The superintendent retired.

OTHER INVESTIGATIVE ACTIVITIES

Prevailing Wage Actions

This year we continued our work in support of prevailing wage law enforcement. Our current prevailing wage cases include some actively under investigation; others with prosecutors’ offices awaiting indictment; and one case in which the defendant has agreed to plead guilty. Additionally, we continue to make referrals to the New York State Department of Labor and the New York City Comptroller’s Office Bureau of Labor Law when appropriate.

On yet a third front, we work with the MTA Auditor General, who performs a prevailing wage audit on one construction contract each quarter. Specifically, MTA Audit Services has requested that the OIG select the contract for audit. Once the audit is complete, with a focus on fraud detection, OIG staff provide their expertise and experience in prevailing wage investigations to help in the preparation of the MTA Audit Services report. Our combined efforts have helped force contractors to pay prevailing wages and led to recoveries by workers who had been underpaid.

Participation in Selection of Independent Private Sector Inspectors General

OIG staff participated in the selection process of qualified individuals to serve on a panel of Independent Private Sector Inspectors General (IPSIGs) serving any MTA agency needing to monitor the performance of a specific contractor. OIG staff attended presentations by the prospective IPSIGs and assisted in vetting them.

Floor Checks

The Floor Check Program is an unannounced inspection by a team of four to ten investigators designed to test a facility’s security, determine whether staff are present and performing their required duties, and ensure that safety protocols are being followed. In 2011, the investigative unit conducted 51 floor checks throughout the MTA Commuter District, at MTA facilities as far north as Poughkeepsie and as far east as Port Jefferson. OIG notified the respective agencies of any improprieties its checks revealed, and made recommendations for disciplinary action as appropriate.

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INVESTIGATIONS
Other Investigative Activities, Continued

Disadvantaged Business Enterprise Task Force

As a result of our Construction Fraud unit's successful efforts regarding DBE investigations, the United States Attorney for the Southern District of New York asked us to take a leading role on its DBE task force. That work continues.

In late 2010, the task force began investigating alleged DBE violations with the goal of filing civil actions under the federal False Claims Act against contractors committing DBE fraud. The task force consists of staff from the US Attorney's Office; the OIG Construction Fraud unit; both the United States Department of Transportation Office of Inspector General and the United States Department of Labor Inspector General; the Port Authority of New York and New Jersey Office of Inspector General; and the New York City Department of Investigation.

As of this writing, the United States Attorney for the Southern District of New York, with investigative partners the Office of the MTA Inspector General and the U.S. Department of Transportation Inspector General, announced the simultaneous filing and settlement of a civil fraud lawsuit against two major construction companies, related to their contract to perform work on the MTA's East Side Access project. The lawsuit alleged that the defendants schemed to avoid their obligations under federal law to hire disadvantaged business enterprises as subcontractors. As part of the settlement, the defendants agreed to pay \$7.5 million, for violating the DBE regulations governing their contract with the MTA, of which \$1 million was paid to the Office of the MTA Inspector General to cover its investigative costs.

Assistance to NYC Transit Vendor Relations

CFU is often called upon to assist NYC Transit Vendor Relations staff in determining whether a contractor, who is low bidder on a contract but who may have adverse information in his/her background, is a "responsible" bidder. Our assistance ranges from providing intelligence to attending and participating appropriately at responsibility hearings.

Stimulus Funds Oversight and Training

CFU continues to monitor and help provide independent oversight and training regarding MTA projects that receive Stimulus funds pursuant to the American Recovery and Reinvestment Act (ARRA).

This year, the chief of the OIG Construction Fraud unit made a presentation to the New York State Stimulus Fund Task Force, entitled "Deterring Fraud on Stimulus Funded Projects."

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Regarding MTA projects and stressing the value of fraud prevention, Construction Fraud unit staff attended 96 progress meetings on Stimulus-funded construction in 2011, and educated the contractors and project managers about the OIG's oversight role. Specifically, the contractors were informed that it is a felony to file a false document with an MTA agency with intent to deceive the MTA, and that any fraud in connection with these Stimulus projects is also a federal crime because the projects are federally funded. We also emphasized to the contractors their obligations related to certified payrolls, disadvantaged business enterprise submissions, and change orders.

Additionally, MTA Audit Services requested the assistance of our Construction Fraud unit as MTA Audit Services began an audit of DBE compliance on ARRA-funded projects. The chief of the Construction Fraud unit met with staff of Audit Services and advised them of the "red flags" to look for when reviewing the use of DBEs on projects. He then helped them identify DBE projects for audit and analysis.

Training and Site Visits

The chief of the Construction Fraud unit and one of the unit's senior investigators gave training presentations to employees of the MTA Department of Diversity and Civil Rights (DDCR) Officer. These training presentations were based on our joint determinations that MTA agency construction management teams needed to be more proactive regarding DBE compliance. With agency supervisors primarily focused on project completion, we needed to broaden their perspective to include fraud prevention and detection. Therefore, our presentations emphasized DBE fraud and methods of deterring and uncovering it.

Two specific benefits resulted from this training. First, to help broaden awareness and prevent fraud the MTA issued a new policy requiring project managers to serve as the single point-of-contact for DBE matters and to identify non-compliant contractors. Second, the DDCR instituted a vigorous compliance program including construction site visits. Notably, the department's efforts have resulted in referrals to the OIG.

Similarly, CFU continued its own site inspection program to help ensure that MTA contractors comply with their legal and contractual obligations. This program makes effective use of unannounced construction site visits to verify compliance on a range of requirements, including those governing qualified materials and subcontractors, wage and safety obligations, and site security.

During these inspections, we examine materials and interview workers on site to determine the identity of their employers and confirm that authorized contractors are actually performing the work. We also check that workers have proper identification, are being paid the prevailing wage, and have proof that they completed safety training.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Other Investigative Activities, Continued

Falsification of Signal Inspections

As reported last year, OIG received information that despite its investigative findings and recommendations in 2000 and 2005, there were again serious problems concerning the inspection and maintenance of NYC Transit switches and signals. Thereafter, during the course of its third investigation, the OIG again found evidence indicating that signal workers were falsifying records. As a result, the OIG partnered with the Office of the New York County District Attorney (“DANY”) to identify those directly and indirectly responsible for the falsification, and determine the nature and extent of any criminal conduct.

In March 2011, a subway signal maintainer was indicted on three counts of Tampering with Public Records in the First Degree, a class D felony, and one count of Official Misconduct, a class A misdemeanor. In essence, the defendant was charged with falsely reporting that subway signal inspections had been completed.

Not long after the indictment of that signal maintainer, OIG received an anonymous tip and initiated an investigation regarding a NYC Transit signal maintenance supervisor. During the writing of this report, the supervisor was arrested and charged with Grand Larceny in the Third Degree, a felony, in a complaint filed in Manhattan Criminal Court. It is estimated that through these activities, the supervisor allegedly obtained at least \$18,000 in unearned salary and overtime. This joint investigation is still ongoing.

Fraudulent Billing by Fencing Contractor

NYC Transit Procurement department personnel contacted OIG concerning certain suspicious invoices submitted by a fencing contractor. OIG investigated the complaint and determined that the contractor, a corporation, regularly submitted to NYC Transit invoices that misrepresented the cost of materials and supplies, often altering its supplier’s bills to reflect higher-than-actual costs. The loss to the agency resulting from these misrepresentations was approximately \$50,000.

In June 2011, the principles pleaded guilty in Suffolk County to Scheme to Defraud in the Second Degree and were sentenced to probation for three years. The corporation pleaded guilty to Grand Larceny in the Third Degree, a felony. As part of the plea agreements, the corporation agreed to forego \$60,000 in unpaid bills, thus accomplishing full restitution to NYC Transit.

~ INTAKE, AUDIT, AND INVESTIGATIONS ~
INVESTIGATIONS
Other Investigative Activities, Continued

Integrity of Subway Car Procurement; Strengthening the MTA Vendor Code of Ethics

In October of this year, the president of NYC Transit personally informed the MTA Inspector General that a senior employee of NYC Transit reported that he had been contacted by a representative of a NYC Transit vendor regarding potential future employment. At the time of that contact, the employee was serving on the procurement selection committee (R179) for the purchase of subway cars regarding which the vendor had submitted a proposal. OIG initiated an investigation at the request of the acting chairman of the MTA Board and the president of NYC Transit to determine whether the procurement was compromised in any fashion.

As of this writing, the OIG has released two pertinent reports entitled: “Report on the Integrity of the R179 Procurement” and “Strengthening the MTA Vendor Code of Ethics.” The first report reflected our investigation that revealed no evidence or reason to believe that the integrity of the procurement itself was corrupted or otherwise impaired. However, we found violations of the MTA Code of Ethics and the MTA Vendor Code of Ethics. In the second report we identified certain fundamental issues regarding distribution of, and compliance with, that Vendor Code of Ethics, which is applicable to vendors for all of the Authority’s subsidiaries and affiliates. It should be noted that the agency accepted all of our findings and recommendations contained in both reports.

OUTREACH



EDUCATION

A form of information sharing that is particularly important to this office is educational outreach. Since his appointment, the Inspector General has emphasized and personally participated in collaborative outreach and training with MTA subsidiaries and affiliates, as well as with law enforcement and other oversight agencies. OIG both conducts fraud awareness and ethics training and participates in training classes presented by law enforcement, regulatory, investigative, prosecutorial, and other watchdog entities. Notably, we also reach out to contractors and labor representatives.

2011 highlights include:

- OIG conducted joint training with the Manhattan District Attorney’s Office on the topic of “Fighting Fraud in the Concrete Testing Industry.” The training was presented in two sessions of the NYC Transit Capital Program Management / Contractor Quality Workshops. Approximately 70 construction managers, professional engineers, design managers and quality assurance personnel attended the training, which focused on: common fraud schemes in the concrete testing industry, specific examples of fraud, potential criminal violations and penalties, tips for recognizing potential fraud (i.e., “red flags”), and suggestions to the members of the audience about their role in the battle against concrete testing fraud.
- OIG, in conjunction with the MTA Department of Corporate Compliance and the New York State Commission on Public Integrity, continued its ethics training to MTA employees. The OIG explained its role in the investigation of ethics violations and the detection, investigation and deterrence of fraud, waste, abuse, and corruption. Our presentation educates employees about how to recognize and respond to “red flags” relating to fraud. We made 16 such presentations to approximately 1,000 MTA employees this year, encouraging them to report issues of wrongdoing to this office.

INTERGOVERNMENTAL COOPERATION

During 2011, OIG maintained relationships with federal, state, and local agencies and task forces, including:

Federal:

United States Attorney for the Eastern District of New York
United States Attorney for the Southern District of New York
United States Attorney for the Northern District of New York
Federal Bureau of Investigation
Internal Revenue Service Criminal Investigation Division
United States Department of Justice: Anti-trust and Environmental divisions
United States Department of Labor, Office of Labor Racketeering and Fraud Investigations
United States Department of Transportation, Office of the Inspector General
United States Railroad Retirement Board, Office of the Inspector General
United States General Services Administration, Office of the Inspector General
United States Secret Service
Eastern District of New York Federal Construction Fraud Task Force
Environmental Protection Agency Criminal Investigation Division

Interstate Agency:

Port Authority of New York and New Jersey, Office of the Inspector General

Other State Agencies:

New Jersey Department of Environmental Protection
Pennsylvania Department of Environmental Protection
Pennsylvania State Police Organized Crime Bureau

New York State:

Office of the Attorney General
Office of the State Comptroller
Office of the New York State Inspector General
Department of Financial Services
Department of Labor
Department of Transportation
Dormitory Authority of the State of New York
New York State Police
Public Transportation Safety Board

~ OUTREACH ~
INTERGOVERNMENTAL COOPERATION

Worker Compensation Board
Lower Manhattan Construction Integrity Team
New York State Secretary of State

Local:

Office of the New York City Comptroller
Bronx County District Attorney
Kings County District Attorney
Nassau County District Attorney
New York County District Attorney
Queens County District Attorney
Richmond County District Attorney
Suffolk County District Attorney
Westchester County District Attorney
New York City Department of Investigations and various agency inspectors general
New York City Department of Buildings
New York City School Construction Authority Office of Inspector General
New York City Business Integrity Commission
New York City Police Department
Westchester County Department of Public Safety

Other:

Long Island Labor Advisory Council