

STATE OF NEW YORK



Office of the Inspector General Metropolitan Transportation Authority

2012 ANNUAL REPORT

Barry L. Kluger
Inspector General

It's a BIG SYSTEM **HELP US KEEP an EYE ON IT**

A collage of four images: a busy transit station with many people, a bridge at sunset, a transit worker in a blue uniform, and a train. The background is a dark green with a grid pattern.

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ABOUT THE INSPECTOR GENERAL



MESSAGE

Some called the weather onslaught Tropical Storm Sandy, or Superstorm Sandy, or Hurricane Sandy. Whatever we called it, this devastating event was the worst natural disaster to hit the MTA in the transportation system's 108-year history. So this year I begin my Message by complimenting the tens of thousands of men and women in the MTA family of agencies who worked so hard, so quickly, and so successfully to restore public transportation after the storm subsided. I also take this opportunity to encourage and support the agencies' continued work to make the values of constructive self-criticism, transparency, and communication the new meaning and promise of "business as usual." As the Inspector General, I firmly believe these values to be the essential principles of trusted public service.

Decades ago, well after the MTA came into existence, the state legislature created the Office of the MTA Inspector General (OIG) to be independent of MTA management, accountable only to the Governor and Legislature, and empowered to independently review the subway, bridge, and railroad operations of the MTA and its agencies.

The Special MTA Study Panel at that time saw OIG as a watchful eye to help improve services and control costs. Most interesting, though, given the Office's requisite independence, was the Panel's view that to be truly effective the Office had to have a close working relationship with MTA management.

For those of us who have worked closely with the MTA both before and after the 2010 blizzard, through Tropical Storm Irene, and culminating in the astounding successes in preparing for and dealing with Sandy, we have certainly realized the benefits of everyone working together for the common good.

Take communication, for example. In the past, the MTA agencies did not communicate well with each other and the riding public. Even as late as the 2010 blizzard, communication between bus operators and their dispatchers was dangerously absent, just as the quality and timeliness of service information to passengers was sorely lacking.

But from my perspective, I now see an institutional disposition to improve.

For example, following the blizzard, the MTA conducted an extensive agency-wide internal review, which we assisted, at its request, by candidly sharing our own observations and recommendations. Thereafter, the MTA team produced a frank and detailed Storm Performance Review, identifying actions to improve MTA performance in

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MESSAGE

future storms. The review incorporated lessons learned along with international best practices in storm management and creative new ideas. All of this work contributed to the excellent performance during the most recent hurricane.

Needless to say, though, even when performance is exemplary, as it certainly was during Sandy, we should always strive to do even more. In the pages that follow, we describe the findings and recommendations we reported in 2012 through our audit work to help the MTA more carefully watch its money, improve productivity, and make operations safer and more efficient. For example, in our report on improving management of crews at the Long Island Rail Road (see page 13), we made findings and recommendations to improve productivity. Similarly, in our report on excessive idling at both LIRR and Metro-North Railroad (see page 14), we used the same technology as in our productivity report to help curb a practice that wastes money and contaminates the environment. And in our audit of structural inspection practices by NYC Transit (see page 18), we found that NYC Transit had not inspected some critical support structures on a regular and timely basis. Furthermore, this is one of several illustrations of the second-look we gave to some of our past accepted recommendations to assess whether and to what extent the agencies have implemented them.

Just as our Audit Division completed these and a range of other projects designed to further improve agency performance, you can read here about some of the cases that our Investigations Division and its Construction Fraud Unit developed and continued to work on with a strong network of prosecutorial and investigative partners. For example, our work with federal prosecutors on an investigation involving disadvantaged business enterprise fraud resulted in a settlement with the government requiring the contractor to pay \$7.5 million (see page 26). Similarly, our joint investigation with the MTA Police led to the indictment of 17 individuals, including 15 LIRR employees, on charges that they stole new and recyclable copper wire store in rail yards and sold the stolen wire for more than \$250,000 (see page 27). And we describe our ongoing work with our federal partners regarding the LIRR retiree occupational disability fraud, which has resulted in indictments and convictions of numerous individuals (see page 41).

Even after convictions result, we continue to work to help improve the process as illustrated by our report entitled “Vulnerabilities of MTA New York City Transit Car Inspector Exam 8080 (see page 30). Specifically, a joint investigation by OIG and the Office of the New York County District Attorney led to convictions of two NYC Transit employees on bribery charges. Beyond the specific criminal conduct we discovered, further investigation by OIG also revealed systemic vulnerabilities that could have facilitated tampering with grades by others involved in the testing process. These vulnerabilities involved test preparation and security, as well as exam administration, scoring and post-exam procedures. OIG discussed these vulnerabilities with NYC Transit and made recommendations to ameliorate them, all of which NYC Transit accepted.

~ ABOUT THE INSPECTOR GENERAL ~
MESSAGE

Lastly, I would like to briefly highlight two points about our Intake and Intelligence Unit (see page 7), which staffs our Hotline, receives complaints, provides intelligence-gathering services, and performs vendor integrity screening. First, in 2012 our Hotline received a total of 5,115 calls — 63.5 percent more than last year. This increase was largely attributable to Sandy’s devastating effect. In its aftermath, Intake and Intelligence staffers responding to Hotline calls provided the public with the most current information available about MTA service. Second, while the unit performs work that may impact millions of riders, sometimes it simply helps make life better for MTA customers one at a time when they turn to us in need. We’ve included some of these stories beginning on page 8.

I am very pleased to submit this 2012 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 Bridges and Tunnels (Bridges and Tunnels), MTA Bus Company (MTA Bus), and MTA Capital Construction Company (Capital Construction).¹

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]).

¹ As used in this report, unless the context indicates otherwise, the term "MTA" includes the constituent agencies.

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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.² 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]).

² 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 to Intake and Intelligence, a unit of our Investigations Division. Complaints and inquiries can be communicated as shown in the **How to Contact the Office of the MTA Inspector General** notice (pictured at right).

Our Hotline is available around-the-clock, staffed during business hours and capable of taking messages at other times.

In addition to its other work, Intake and Intelligence 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

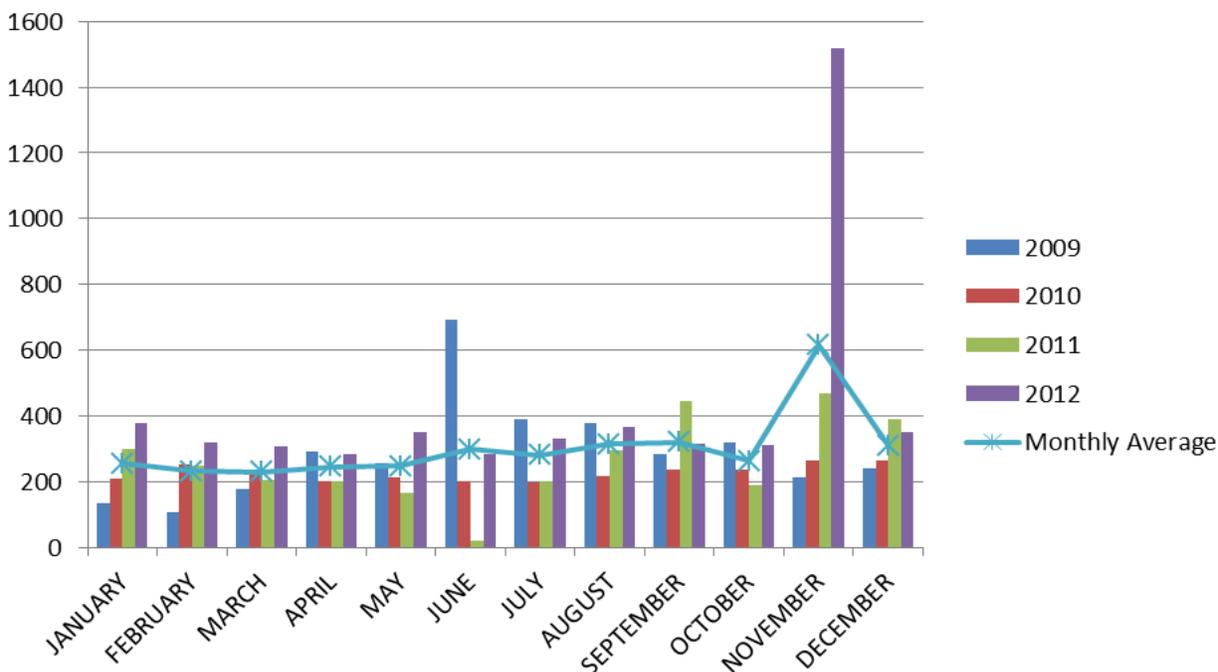
Website: www.mtaig.state.ny.us

Hotline

Consistent with the OIG's generally broad approach to fulfilling its responsibilities and best serving the public, the Hotline provides customers with a simple, direct, and personal way both to communicate complaints and request information on an individualized basis. Indeed, in 2012 our Hotline received a total of 5,115 calls—63.5 percent more than last year (Figure 1).

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INTAKE AND INTELLIGENCE

Figure 1: OIG Monthly Hotline Trend (2009-2012)



This increase was largely attributable to Hurricane Sandy’s devastating effect on the MTA’s transportation system at the end of October 2012. In its aftermath, Intake and Intelligence staffers responding to Hotline calls provided the public with the most current information available about MTA service.

Complaints

Among its other contacts, Intake and Intelligence received nearly 1,100 complaints from individuals both inside and out of the MTA. Each complaint is reviewed to assess how best to resolve it. Those complaints concerning fraud, waste, abuse and the like are referred to the Audit or Investigations Division to resolve alone or in partnership with law enforcement. Other matters are retained for resolution by the unit itself, generally involving particularized customer service problems. The unit continues to expedite resolution of these problems by directly contacting appropriate MTA agency personnel, rather than by sending complaint paperwork through a lengthy referral process. These customer complaints reflect a range of issues including EZ Pass; MetroCard and commuter railroad ticketing; and Access-A-Ride eligibility.

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

- Complaint No. 27001: A complainant called the OIG to report that EZ Pass failed first to automatically replenish the complainant’s account—meaning that tolls

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went unpaid—and then failed to refund the resulting \$450 in accumulated penalties. After reviewing the correspondence between EZ Pass and the complainant, as well as other EZ Pass documentation, Intake and Intelligence staff flagged the “glitch” in the EZ Pass system for future patterns and trends analysis and facilitated a full refund to the complainant.

- Complaint No. 27496: A complainant relocated to Florida and returned her EZ Pass tags. Nevertheless, as she complained to the OIG, EZ Pass charged her credit card \$75 for tolls incurred *after* the tags had been returned. After Intake and Intelligence staff reviewed the facts and circumstances involved, they determined that one of the tags returned by complainant somehow was left on an EZ Pass delivery truck while still active and unshielded. Each time the truck passed through a toll lane, the complainant incurred a charge. Staff flagged this matter for future review for patterns and trends and the complainant received a full refund of the erroneous charges.
- Complaint No. 27540: The complainant submitted a ten-trip Metro-North ticket valued at \$112.50 for a refund that was subsequently denied. Metro-North also denied the complainant’s request for the return of the ticket. Intake and Intelligence staff reviewed this matter and determined that while a refund must be requested within 30-days, a ten-trip ticket is valid for travel for six-months. Because the ticket was still valid for travel, staff facilitated a return of the customer’s ticket.
- Complaint No. 27532: The complainant was approved for Access-A-Ride (AAR) but the issuance of his AAR identification card was delayed for nearly three months, which led the complainant to believe he could not use the AAR service. Because he needed the service, he asked Intake and Intelligence for help. Staff promptly reviewed the matter and determined that there was an error in the issuance of the complainant’s identification card. As a result, AAR quickly remedied the situation by expediting the issuance of the card. Meanwhile, Intake and Intelligence staff advised the complainant that he could use other forms of identification, in conjunction with his AAR reference number, to utilize the AAR service immediately.

Intelligence Activities

As described above, unit staff provides a valuable intelligence-gathering function in performing their preliminary assessment of complaints. Additionally, staff assists with proactive case development and other reviews assigned to the unit. This year unit staff conducted 67 formal intelligence searches in support of OIG investigations, audits and reviews.

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The unit also conducts background checks for a variety of law enforcement agencies, including the New York City Police Department (NYPD) and the NYC Department of Investigation. In 2012, the unit conducted 99 background checks and provided other assistance to those agencies.

Vendor Integrity Screening

The OIG is an active member of the Lower Manhattan Construction Integrity Team (LMCIT). The goal of the LMCIT is to ensure that all construction projects within its jurisdiction proceed with integrity, free of corruption and wrongdoing. This year Intake and Intelligence performed 257 vendor screenings for LMCIT.

The unit continues to assist 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 MTA 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. This year, Intake and Intelligence produced a total of 13 in-depth integrity reports for the MTA General Counsel. The unit also produced 47 integrity reports for the New York State Thruway Authority and the New York State Department of Transportation to assist in their vetting of contractors with respect to the award of a \$3.1 billion construction contract to design and build a replacement for the Tappan Zee Bridge.

AUDIT

The Audit Division (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, effective, and efficient, and make recommendations for improvement wherever possible. The division is comprised of highly experienced auditors, most of whom have a graduate degree in a related field. Audit regularly assists and consults with the MTA Auditor General and other audit and investigative units throughout federal, state, and local government, and has provided valuable analytical assistance for a wide range of investigations of agency employees and vendors.

In 2012, Audit continued our reporting on major service disruptions and their cause, and issued significant reports regarding asset inspections and construction management. Both themes have been, and continue to be, a major focus of this office. These reports are described below. We also preview here certain ongoing work of particular public interest.

REPORTS

The Lightning Strike and Long Island Rail Road Service Disruption, September 29, 2011

(MTA/OIG #2012-01)

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 General began its independent 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 review provided an opportunity for us to revisit an earlier review that we performed with LIRR in 2007 following service disruptions caused by downed power lines and Right-of-Way fatalities; our purpose now being to determine whether during its response on September 29, 2011,

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the LIRR implemented and utilized the improvements it promised in 2007 based on recommendations made by the OIG at that time.

As a result of our current review, we found that the LIRR and its signal system designer shared responsibility for the crippling effects of the power surge and its aftermath. We also found that LIRR personnel performed deficient Quality Assurance (QA)/Quality Control (QC) both during and after installation of the new system. Specifically, LIRR failed to detect both the installation of a wrong connector when installing a server, as well as the non-installation of certain components shown on the original design. Perhaps most important, we found that the power outage and subsequent delay resulted from the contractor's design limitations and the railroad's installation deficiencies.

We made six recommendations regarding both equipment modification and response to rail service disruptions, all of which LIRR accepted and three of which LIRR has fully implemented. The QA/QC function is now independent of the installation function, and is strengthened with new lightning protection protocols; on-site storage of essential spares has been accomplished; and an independent review of planned upgrades to the failed system is completed. Three additional OIG recommendations are still in the process of implementation. These involve effectively coordinating the dissemination to appropriate LIRR staff of service and warranty agreements on all installations completed since the installation of the signal system at Jamaica; issuing appropriate internal controls requiring the confirmation of design compatibility before installing modifications to existing assets; and ensuring that appropriate levels of staff training are completed and that adequate documentation is on hand for all newly installed equipment.

Regarding the improvements promised by LIRR in 2007, we noted that in the intervening years LIRR took significant action to make its operational response more effective and efficient. LIRR created a Public Information Office staffed 24 hours a day to assist in emergencies. LIRR also created a new position, the Customer Advocate, to assist the Public Information Office by coordinating contact with crews of stranded trains. However, we also noted that two of the promised improvements — increased staffing levels during emergencies and more straightforward communications with passengers — were not yet fully realized.

As noted above, the improvements promised by LIRR in 2007 were derived from recommendations made by OIG at that time. In particular, these two staffing and communication improvements were based on OIG recommendations that the LIRR (1) analytically determine the staffing needs for major disruption at major hubs, specify these requirements in the Emergency Action Plans, and devise a cost-effective plan for producing the requisite staff at the major hubs in the event of a disruption; and (2) further develop and refine its protocols to facilitate the dissemination of appropriate information to passengers on stranded or standing trains regarding why they are stopped, and the

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plans being pursued and progress being made to get them going again. Since the lightning strike in September 2011, the LIRR has implemented both of these recommendations.

Improving the Management of Crews in the MTA Long Island Rail Road's Structural Maintenance Division
(MTA/OIG #2012-05)

The Long Island Rail Road maintains its vast network of stations, bridges and facilities with an in-house workforce comprised of five- or six-person crews. These crews might be assigned to various locations over a wide area throughout any given day. While monitoring the performance and whereabouts of such workers is certainly challenging, doing so is essential to maintain an appropriate and cost effective level of productivity.

OIG examined the replacement of a staircase at the Great Neck station performed by a crew from LIRR's Structural Maintenance Division and concluded that workers were not productively engaged. We estimated that several thousand labor hours and more than \$160,000 were wasted through lax supervision of the crew assigned to the project. Notably, the problems that OIG encountered on this project appeared to be systemic. Our findings indicated that low expectations on the part of the supervisor in charge of the project with regard to the amount of time that the crew was expected to spend at the job site each day, reduced the productivity of the crew. Moreover, because division managers and the project supervisor did not employ a project schedule and budget to plan and monitor the project, they could not ensure that the project would be completed in a timely and efficient manner. Indeed, our review of two other LIRR construction projects performed by crews from Structural Maintenance — a fence installation along a roadway in Manhasset and staircase replacement at Deer Park station — revealed that the same management deficiencies, including low expectations, also delayed the completion of these projects.

In conducting its review, OIG utilized information obtained through the LIRR's Automatic Vehicle Location Monitoring (AVLM) system to locate vehicles in real time, and run historical reports on vehicle location. OIG used the AVLM data specifically to reconstruct the amount of time crews spent at the job sites for our three case studies. As a result, OIG found that on average, slightly more than one hour of each 8-hour shift was lost on the Great Neck, Manhasset and Deer Park jobs, because the crew members were slow to arrive at the job site and/or left the job site before the scheduled end of their shift.

In order to ensure that all field crews are productively engaged, OIG recommended that LIRR management set standards for work performance, including clearly-defined expectations for its field crews regarding job site arrival and departure times; require development of work scopes, budgets, schedules and status reports for

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construction jobs performed by crews in the Structural Maintenance Division; and periodically monitor these workers.

The railroad accepted all our recommendations and had implemented all but one by the end of 2012. LIRR explained that the remaining recommendation, to use AVL M technology to monitor crews on a daily basis, required training and pledged to complete it by the third quarter of 2013.

Excessive Idling of Highway Vehicles at Long Island Rail Road and Metro-North Railroad

(MTA/OIG #2012-06)

As an offshoot of the productivity report described immediately above (MTA/OIG #2012-05), the OIG performed an analysis that revealed that highway vehicles at both LIRR and Metro-North idle their engines excessively, and often illegally. While as a practical matter some vehicle idling may be unavoidable, excessive idling almost literally burns money and contaminates the environment. According to the U.S. Department of Energy's Argonne National Laboratory, vehicle idling in the U.S. wastes six billion gallons of fuel annually at a cost of \$20 billion. Not only does excessive vehicle idling burden the public with wasted fuel and noxious emissions, it is also prohibited under New York State law, which bans certain vehicles from idling for periods exceeding five minutes.

While vehicle idling may be reduced through the enforcement of law, in the larger sense curbing excessive idling remains the individual and corporate responsibility of vehicle owners and drivers. Toward this end, the Automatic Vehicle Location Monitoring system, the GPS-based technology developed and utilized primarily to track vehicles discussed above, has emerged as a powerful management tool to limit idling, protect the environment, and save organizations millions of dollars in wasted fuel costs.

Beginning in 2007, the LIRR installed AVL M devices on its 586 highway vehicles for maintenance purposes. In a pilot program started in February 2012, Metro-North similarly installed AVL M on 48 of its 603 highway vehicles. Neither railroad installed AVL M with the intention of monitoring vehicle idling, but an analysis by OIG utilizing that technology reveals that vehicles in both agencies idle unnecessarily, and often illegally.

OIG's review of LIRR and Metro-North's AVL M data found that:

- LIRR's highway fleet of 586 vehicles idled illegally for over 12,600 hours in January 2012. Illegal idling wasted over 13,000 gallons of fuel at a cost of \$40,000. The total annual cost of idling at LIRR likely exceeds \$500,000.

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- Projecting from the data available during Metro-North's pilot project, Metro-North highway vehicles idled illegally for an average of 8,000 hours per month during the study period, thereby wasting over 7,000 gallons of fuel, at a cost of over \$25,000. The total annual cost of idling at Metro-North could exceed \$300,000.

OIG recommended that LIRR and Metro-North prohibit unnecessary idling for all vehicles in their respective highway fleets, amend their current vehicle operating policies to reflect this prohibition; educate employees on the financial and environmental costs of idling; monitor vehicle idling on an ongoing basis; and discipline employees who continue to idle unnecessarily. Additionally, OIG recommended that Metro-North move forward with a full deployment of AVL M throughout its highway fleet to track idling and achieve other fleet efficiencies. These efficiencies include reviewing and analyzing payroll data, checking billed overtime, identifying unauthorized vehicle use, increasing deployment efficiency, enhancing productivity, improving customer service, and assisting in the recovery of stolen vehicles.

LIRR and Metro-North agreed with all of OIG's recommendations. To comply, LIRR is in the process of updating its vehicle policies to prohibit idling. LIRR has also created a new administrative unit to help ensure compliance with various policies, including its ban on unnecessary vehicle idling.

For its part, Metro-North updated its operating procedure governing employee use of highway vehicles in late 2012 to prohibit unnecessary idling. Metro-North also launched an anti-idling employee awareness campaign by publishing notices in Metro-North's employee newsletter, affixing anti-idling stickers to the dashboard of its highway vehicles, and running notices on video screens at Metro-North offices and facilities. The railroad has agreed to install AVL M on its fleet of highway vehicles that exceed 11,000 pounds (approximately 185 of its 603 vehicle fleet). These highway vehicles are to be equipped with AVL M by the third quarter of 2013. Following installation, Metro-North has told OIG it will take administrative actions to monitor and enforce its idling prohibition.

Minimizing Additional Work Orders on NYC Transit Capital Projects (MTA/OIG #2012-10)

The MTA NYC Transit Department of Capital Program Management (CPM) is rehabilitating 12 stations and segments of the elevated steel structure on the West End Line (the West End Rehabilitation), which carries the  train in Brooklyn. The work is being done as two construction contracts — one for the northern section and one for the southern section. As of July 2012, the contracts' cost to repair the structural steel had increased by \$5.2 million, with that amount expected to grow as the project advanced. OIG initiated a review of the steel repair work specifically to understand why the cost

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was significantly higher than anticipated. Notably, during this review it became clear that the problems we encountered on this project were systemic.

For starters, CPM had hired a design consultant to conduct specific inspections and to develop a design for the construction work in order to determine at the outset which work to include in the construction contracts. However, OIG found that the consultant did not perform all contractually required inspections. CPM also did not provide sufficient oversight of the design consultants in that it provided neither input from relevant engineering disciplines into inspection planning nor any direct observation of inspections to determine whether consultant personnel actually implemented required procedures. As a consequence, of the \$3 million in work that should have been anticipated and included under the original contract, more than \$1.6 million was overlooked by the consultants and therefore not included in the bid proposal.

OIG also found that CPM did not ensure that the construction contracts provided the contractors with sufficient design details for repairs of steel encased in concrete such as that found at the base of a column that supports an elevated subway line. As a result, critical repair work not included in the construction contracts had to be added later as Additional Work Orders (AWOs), which increased costs and engendered delays. In turn these delays affected the quality of neighborhood life in various ways, including impinging on already-limited street parking availability and fostering unsanitary conditions.

Further, the agency did not include any provision in its fixed-price contract for effectively and efficiently addressing a change in the quantity of repairs of concrete-encased steel. Because the condition of the steel is obscured by concrete, the nature and extent of any repairs can only be estimated. Consequently, it is a virtual certainty that the repairs actually needed will vary from the estimate in the contract, and thus trigger the need for costly and time consuming AWOs. Indeed, that is precisely what happened regarding the West End Rehabilitation, where the construction contractors designed and quantified repairs and obtained NYC Transit approval on a repair-by-repair basis after contract award. This approach resulted in nearly \$1.4 million in AWOs and contributed to 12 months of project delays.

In total, OIG found that at least \$3 million of the \$5.2 million in AWOs on the West End Rehabilitation was for work that should have been anticipated, bid on, and included under the original contract.

We noted in the report that NYC Transit's resources are already severely limited and the agency certainly cannot afford the additional costs associated with work that should have been part of the original contract. Therefore, we recommended that NYC Transit ensure that the CPM managers overseeing the consultants' work (1) have the proper expertise and support to make certain that the consultants have appropriate

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inspection plans and adhere to all contract specifications, and (2) monitor the consultants' inspections in the field to make certain that these consultants are employing all appropriate inspection techniques for identifying structural defects. We also recommended that NYC Transit assess the consultant hired to design the West End Rehabilitation for additional costs due to inspection and design mistakes, and assign the consultant an "Unsatisfactory" performance rating in the MTA All-Agency Contractor Evaluation System.

Finally, we recommended that NYC Transit use unit pricing for those repairs with quantities that cannot be precisely ascertained before construction begins. Toward that end, we further recommended that NYC Transit prepare a comprehensive list of potential repair elements that would address all conceivable defect types uncovered during construction and obtain agreement in the contract on a unit price for each.

NYC Transit agreed to move forward with all of our recommendations. To begin, the agency assured OIG that it will improve oversight by requiring its consultants to submit formal, detailed inspection plans for CPM's approval. Moreover, NYC Transit will modify its contracts to clarify inspection requirements for testing. Additionally, CPM personnel will conduct periodic site visits to ensure that consultants conduct proper inspections, including adherence to the formal inspection plan.

NYC Transit further assured OIG that it will review the AWOs for the West End Rehabilitation project, and if it finds that the consultant was responsible for design errors or omissions that led to the need for the AWOs, the agency will reflect this outcome in the MTA All-Agency Contractor Evaluation database and will explore the feasibility of claiming damages against the consultants.

Finally, NYC Transit agreed to use unit pricing for those repairs with quantities that cannot be precisely ascertained before construction begins. Specifically, for all future contracts that may reasonably require steel repairs, the agency will include unit price provisions in the contract for potential types of defects and the associated repairs.

MTA Real Estate Department Oversight of 2 Broadway Property Management Contractor

(MTA/OIG #2012-08)

The MTA Real Estate Department (RED) employed a private commercial real estate services firm to manage and operate several of its office buildings, including its leased space at 2 Broadway. Upon referral by the OIG Investigations Division, Audit reviewed 2 Broadway operating expenses processed by the property management contractor for the period from October 2006 to August 2012. Our review evaluated whether RED provided effective oversight to ensure that the contractor complied with its contractual obligations and did so in a cost-effective manner. We determined that RED

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did not provide such oversight, and that its deficiencies were in three basic areas: subcontractor payments; recordkeeping; and competitive procurement practices.

For example, regarding subcontractor payments, OIG found that one cleaning subcontractor billed and was paid separately for work that was included in the base cleaning contract. Because RED did not effectively review the building monthly expenditures in light of the base contract, it did not detect the double payments. Further, the contractor paid the same subcontractor for building engineering services at a higher level than approved by RED in the awarded contract. Here again, RED did not verify that the monthly payments by the contractor matched the amount authorized by RED in the original contract. Upon receiving OIG's notice about these overpayments, RED and the MTA Legal Department commenced appropriate efforts to recoup the overcharges.

Besides alerting RED of the overpayments, OIG also made recommendations that will help RED improve its internal processes and controls for the new property management contract.

In response to the OIG findings, RED acknowledged deficiencies in its oversight of the property management contractor. According to the director of RED, as a result of the findings, he implemented corrective actions to improve the oversight of the property management contractor, including placing an employee with more experience in building operations to oversee the contractor's performance.

Improving Structural Inspections at MTA New York City Transit (MTA/OIG #2012-11)

MTA NYC Transit operates over 240 route miles of subway structures with 468 stations system-wide. Responsibility for the structural integrity of this vast system rests with the NYC Transit Department of Subways' Maintenance of Way and Station Maintenance divisions, as well as with the NYC Transit Department of Capital Program Management. To safeguard riders and employees, these units must regularly inspect NYC Transit structures for defects. Such inspections are also vital to the agency's proper management of its limited resources for maintenance and capital repair.

Our audit of structural inspection practices, though, found that NYC Transit has not inspected some critical support structures on a regular and timely basis, and in some cases has not inspected certain critical structures for decades. The overlooked structures we found include steel supports at elevated stations on the  line; truss bridges (one of the oldest types of modern bridges); high elevated structures (such as the one at Smith and 9th Street in Brooklyn which is the highest subway station in the world); underwater structures; and the concrete Rockaway Viaduct that spans Jamaica Bay in Queens. While for some of these critical structures the inspection records were many years old, for some of the other structures inspection records do not even exist.

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Furthermore, the audit found that NYC Transit had not regularly inspected hard-to-reach station ceilings, despite its agreement to do so in accordance with recommendations in our earlier related MTA/OIG Report #2010-05, Improving Inspections of NYC Transit Stations. Indeed, as of February 2013, these inspections were up to three years behind schedule, with inspection consultants not yet even hired.

Finally, the audit found that NYC Transit has not been inspecting abandoned sections of stations that provide structural support for the active sections of the stations; perhaps more disturbing, agency officials did not even have an inventory of these abandoned structures.

As basic principles, NYC Transit must devote all necessary financial and human resources to make certain that its infrastructure is safe, and agency management must document the condition of each of its assets to effectively plan and prioritize maintenance and repairs. Certainly, the absence of timely inspection increases the risk of serious structural failure. Therefore, we made seven recommendations that are designed to promote safety, and to make structural inspections broader in reach as well as more timely, effective, and efficient.

NYC Transit agreed with our seven recommendations, which should generally make structural inspections more timely and cost effective. For example, NYC Transit has now re-emphasized to its inspectors that the elevated station platform supports are a required part of the annual inspection. Further, the agency has issued a revised policy instruction that will serve to reinforce and clarify the responsibilities for structural inspections and their frequency.

NYC Transit also assured OIG that it reviewed its inspection schedules generally, in accordance with our recommendation, including the five-year inspection cycle for the over-water portions of the Rockaway Viaduct, hard-to-reach station ceilings, truss bridges, and underwater structures. The agency explained that it established — and expects to retain — the five-year cycle based on the particular characteristics of these structures. NYC Transit also informed OIG that it has hired consultant engineers to inspect these special structures and made clear that the current inspection frequencies for them may be revised, depending on the findings of the consultant engineers.

As for abandoned facilities that still serve a structural purpose, NYC Transit confirmed that it has recently completed an inventory of these facilities and is developing an inspection cycle for them.

Lastly, NYC Transit also confirmed its plans to monitor the nature and frequency of its structural inspection process on an ongoing basis to identify and implement improvements as needed.

FOLLOW-UP ON RECOMMENDATIONS FROM PREVIOUS REPORTS

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 hundreds of elevators, escalators, and stairways that allow access into and out of its 468 stations. While most of these subway system access points are maintained by the NYC Transit 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 owners of this 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 right of access agreements (called "easements") with NYC Transit.

In late 2011, OIG reported that the MTA and NYCT needed to improve how they managed privately owned elevators, escalators and stairways. While private operators were contractually responsible under the easement agreements for maintaining this property, MTA and NYC Transit were 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. OIG made a series of recommendations, which included designating a lead department to be primarily responsible for privately maintained escalators, elevators, and stairways.

As a result of the audit, the MTA Real Estate Department drafted a Memorandum of Understanding among itself and the other departments involved in securing and maintaining agreements with private owners. The agreement was approved and signed by appropriate senior management in June 2012. It names MTA Real Estate as the lead department for negotiating new agreements and making sure private entities perform their obligations under the agreements. MTA Real Estate is also responsible for creating a comprehensive and up-to-date inventory of the out of system property. Importantly, Station Environment staff reportedly inspects equipment daily and outages are reported by the Elevator and Escalator Department for the MTA website.

LIRR Crew Book Efficiency

(MTA Inspector General Letter dated February 22, 2012)

The LIRR Crew Book contains the daily assigned train runs for all LIRR passenger crews. In our 2011 Annual Report we reported on three flash letters (i.e., alerts

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to top agency management) with recommendations that we issued that year as part of our ongoing initiative to improve crew efficiencies. If implemented, we believe that these recommendations could save LIRR approximately \$1.3 million annually. Indeed, the implementation in 2012 of just one of the recommendations saved the LIRR about \$500,000.

In 2012, we issued a fourth letter recommending that LIRR assign up to 20 “Extra List” crews to work holiday shifts rather than assigning regular passenger crews to work those shifts, thereby saving over \$100,000 in “guarantee pay” and related benefits. Guarantee pay is a day’s pay made only to Extra List engineers and conductors when they report and are available to work, but are not actually assigned to any crew. Because of the interactions of “guarantee pay,” “holiday pay,” and “overtime pay” the LIRR saves money by assigning crews from these Extra Lists to work on holidays instead of using regular passenger crews. We found that between 36 and 77 engineers and conductors received guarantee pay on each of six weekday holidays in 2011 by not working, meaning that the LIRR could have achieved net savings by assigning more of these Extra List crews to perform work on those days. The LIRR is now implementing these changes in a pilot program. The two-part goal here is to reduce unnecessary payments to engineers and conductors while having sufficient crews available to fill all assignments.

Value Engineering at MTA New York City Transit
(MTA/OIG #2008-16)

NYC Transit mandates that capital projects estimated to cost \$10 million or more upon completing the Preliminary Engineering stage of design undergo a Value Engineering (VE) review prior to contract award. The purpose of these reviews is to lower estimated capital construction expenditures by identifying cost-saving alternatives to the agency’s planned building methods, material specifications, and labor allocations. Our 2008 report on Value Engineering found that between 2005 and 2007, NYC Transit’s in-house design managers had inappropriately excluded from the VE Program 15 of 40 projects that met the \$10 million threshold. OIG made and NYC Transit accepted two recommendations intended to broaden the coverage of the VE Program.

The first recommendation resulted in NYC Transit modifying its written procedures to increase management review to ensure that design managers either conduct VE or obtain approved variances as appropriate. The second required design managers to refer projects for VE if their cost estimates rise above the \$10 million threshold following the completion of Preliminary Engineering. Our audit also offered several suggestions for expanding the effectiveness of the current VE Program, including giving consideration to adding project complexity as a criterion for VE, and to re-evaluating NYC Transit’s operational and construction standards. NYC Transit personnel had informed us that in the past, adherence to these standards resulted in high rates of rejection of VE cost-saving proposals.

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In 2012, OIG conducted a follow-up review. Regarding opportunities to expand the effectiveness of the VE program, discussions with CPM indicate that the current dollar threshold generally functions to capture projects that likely have complex scopes of work. As to the seeming incompatibility of operational and construction standards with VE cost-savings, NYC Transit has been addressing this issue by applying the VE methodology in its revision of internal documents known as design guidelines. These design guidelines establish standards and expectations for materials and construction elements, agreed upon among CPM and other NYC Transit departments, that CPM is to follow when it builds capital projects. NYC Transit expects that using the VE process when revising the standards will help integrate cost saving methods into NYC Transit capital project designs.

Additionally, we found that CPM's Estimating Division now provides a monthly design milestone report to the NYC Transit official in charge of VE. Because the report lists all projects in design and breaks down all milestones, budgetary information, and budget changes by project, it protects NYC Transit from "missing" projects that should undergo a VE design review. OIG tested the effectiveness of this tool by obtaining capital project data going back two years. We found no instances in which projects that should have undergone VE failed to do so, except in cases where appropriate waivers were granted.

Follow-up on Prior OIG Review of New York City Transit Authority Material Purchase Contract

In 2003, the OIG conducted a review of a five-year, \$20 million commodities contract awarded to a building supplier four years earlier. The contract was designed to improve efficiency in obtaining general building, electrical, and plumbing materials by reducing inventory, lead-time and by providing direct delivery of materials to work sites. The contract allowed NYC Transit employees to purchase various materials such as lumber, fasteners, cement, electrical wires, and copper pipes directly from the vendor on an as-needed basis.

That OIG review identified some abnormalities in the delivery and billing of purchased materials and areas for improvement in the internal controls. Specifically, OIG found that some items received by NYC Transit were not properly dated on delivery tickets; the supplier overcharged for certain materials; and an undocumented contract negotiation gave the supplier a high markup on materials not anticipated in the contract. After the expiration of this contract in 2004, NYC Transit awarded two more material contracts to the supplier in 2004 and 2011.

OIG performed a follow-up review in 2011 to determine if the same lack of controls and ability to overcharge exists in the current contract. To the contrary, OIG found that NYC Transit and the supplier had corrected the previously noted deficiencies

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and are generally in compliance with the terms and conditions of the more recent contracts. We found that delivery tickets were properly dated; correct prices, including appropriate discounts or mark-ups were applied to purchased materials; and where required, proper records were provided to support the prices charged by the supplier.

INVESTIGATIVE AND GENERAL SUPPORT BY AUDIT

Providing investigative assistance continues to be a growing share of the auditors' workload and significantly benefits the Audit and Investigations divisions as well as other outside agencies.

For example, in accordance with our powers and duties under Public Authorities Law section 1279 regarding the Public Transportation Safety Board, we assisted PTSB's investigation of a fatality on an escalator at the LIRR Lindenhurst Station. Additionally, we assisted PTSB in its review of how LIRR handles its escalator inspection and maintenance contracts and program. As a result of this joint effort and the LIRR's own internal review, LIRR initiated the replacement of all older escalators in its service territory and also created a new unit within the Customer Service Department to oversee escalator rehabilitation work. The OIG conveyed the lessons learned from the PTSB investigation and review to Metro-North and NYC Transit, which also maintain escalators within their systems.

Auditors also pursue concerns raised by complainants to determine if there is a need for a full audit or investigation. Several examples follow.

Station Doors:

OIG auditors following up on a complaint inquired into why most of the station doors at the Avenue U and Neck Road stations on the Brighton Line (the Q Line) of the subway system were broken and locked for one to two months or more. These stations had just been rehabilitated and the doors were new. The auditors met with NYC Transit station, safety, and construction oversight officials. These officials informed us that the contractor had incorrectly installed the doors and NYC Transit was having difficulty getting the contractor to repair them. The agency officials acknowledged that the broken and locked doors were a significant inconvenience to customers. During the course of the OIG review, the construction contractor finally repaired the doors.

Bus Lanes:

In response to another complaint, OIG auditors reviewed whether bus lanes were properly designed for both regular and articulated (extended) buses at the Gun Hill Road intermodal facility, which was under construction during early 2012. As part of the review, auditors analyzed construction plans and bus design standards. In response to the

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review, NYC Transit performed test runs with the different buses, which persuaded OIG that the intermodal facility would be able to handle both types.

Access-A-Ride Eligibility Testing:

OIG also received allegations that a contractor responsible to the Paratransit Division of NYC Transit (Paratransit) for evaluating Access-A-Ride eligibility had performed and charged for unnecessary tests. Specifically, it was alleged that some applicants who were clearly eligible for Access-A-Ride based on cognitive problems nevertheless were given a separate functional test of their physical ability to navigate the transit system. OIG reviewed a sample of cases from 2010 that the complainant had cited. Examples included elderly people who qualified based on having advanced dementia but were tested anyway for their ability to walk, climb aboard a bus, and the like. This additional testing is a burden for the applicants and results in an extra charge to the MTA.

OIG auditors found, however, that the contractor had complied with Paratransit instructions that this functional test be done whenever possible. We also determined that in many cases functional testing may be necessary to determine the degree of eligibility for services. Further, we learned that Paratransit had recognized the need for some adjustments and modified its procedures in mid-2011 to require that contractors justify any such functional exams for applicants over age 80. This change resulted in a substantial reduction in the frequency and cost impact of functional testing.

Audit's review of testing data for all six eligibility assessment centers revealed that the frequency of different tests (psychological and functional) varied, in some cases substantially, across the testing centers. Paratransit had not been reviewing these aggregate data, thus missing an opportunity to detect problems or differing practices among its contractors. We informed Paratransit officials about these issues and about opportunities to improve their testing instructions and use of testing data to assess contractor performance. Paratransit was receptive to these opportunities for improvement.

Excessive and Unnecessary Overtime:

In another instance, OIG received a complaint that contract employees providing engineering services at MTA Headquarters buildings, claimed and received payments for excessive and unnecessary overtime with the approval of the MTA Facility Manager. In responding to the complaint, OIG's audit staff examined the contract employees' overtime claims of nearly \$500,000 for the period from November 2008 to April 2012. We noted that the excessive overtime raised in the complaint had occurred during Hurricane Irene in August 2011 and during a period when the cooling system of one of the buildings was being replaced. In these instances, we determined that it was

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reasonable for one or more of the service engineers to remain on duty for extended periods of time to better handle potential building emergencies during the hurricane and to ensure that the MTA computer servers' operating environment was adequately controlled with portable cooling equipment.

Regarding the allegation of unnecessary overtime, we determined that all overtime had received prior approval from the MTA Facility Manager and was generally reasonable and supported. However, in some cases, additional explanations and/or documentation was required for OIG staff to assess the reasonableness of the overtime. We discussed the need for additional documentation to be kept in the files with the MTA Facility Manager and made suggestions to improve the recordkeeping of the overtime files. The facility manger agreed to implement the suggested recordkeeping improvements.

INVESTIGATIONS

The Investigations Division (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, we refer matters to appropriate law enforcement and other governmental officials for further investigation, in which the division routinely participates, and/or for criminal or civil enforcement.

The division 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, 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 (beginning on page 39). 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, minority, and women's 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; Contractors Pay \$7.5 Million

This year, following an investigation by CFU with the Disadvantage Business Enterprise (DBE) task force, two large contractors and their joint venture settled a civil

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action brought by the United States Attorney for the Southern District of New York related to their contract to perform work on the MTA's East Side Access project (ESA). The lawsuit alleged that the defendants engaged in a scheme to avoid their obligation under federal law to hire DBEs by falsely representing to the MTA that they were paying millions of dollars to qualified entities when the work was actually being performed by non-DBE subcontractors. Between June 2006 and November 2008, the joint venture submitted monthly reports to the MTA outlining its progress towards meeting its DBE participation goal of \$22 million for ESA. On each report, the joint venture certified that the information was accurate. By November 2008, the joint venture reported that it had paid about \$17 million to DBEs for work performed when it actually had paid less than \$5 million for such work.

As part of a settlement with the federal government, the defendants paid \$7.5 million and the joint venture admitted and accepted responsibility for violating the DBE regulations governing their contract with the MTA. The OIG received one million dollars of this settlement to cover its investigative costs.

Copper Theft from LIRR

The OIG and the MTA Police Department conducted a joint investigation into theft of copper from the LIRR. This investigation established that 17 individuals, 15 of whom are LIRR employees, including two assistant foremen, stole new and recyclable copper wire stored in rail yards and used LIRR trucks to transport the wire to their own personal vehicles. From there, they sold the stolen wire to a scrap metal company – at scrap value — for more than \$250,000. Following a referral to the Office of the Nassau County District Attorney, in January 2013, a Nassau County grand jury indicted 17 people for Criminal Possession of Stolen Property in the Third Degree, a felony.

In response to these thefts, LIRR management has enhanced its security measures in yards and designed new policies and procedures to help track their inventory of valuable metals and deter future thefts. OIG investigators and auditors are monitoring these actions and providing recommendations in their development and implementation.

Contractor and its Individual Principals and Manager Indicted in State DBE Case

Following a joint investigation involving the Construction Fraud Unit, the Port Authority of New York and New Jersey Office of the Inspector General, the US Department of Transportation Office of the Inspector General, and the US Department of Labor, Office of Labor Racketeering and Investigations, the Office of the New York County District Attorney presented evidence to a grand jury that returned a nine-count indictment against a contracting company and its key personnel. The contractor, which performed work for both the MTA and the Port Authority of New York and New Jersey, was charged, along with the individual defendants, with one count of Scheme to Defraud

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in the First Degree, a felony. In addition, all defendants but one were charged with seven counts of Offering a False Instrument for Filing in the First Degree, also a felony, for filing false DBE forms and a false certified payroll with the MTA. Finally, all defendants but one were charged with Offering a False Instrument for Filing in the First Degree related to a false contract proposal submitted to the Port Authority of New York and New Jersey. The case is pending trial.

Contractor Pleads Guilty in Prevailing Wage Fraud Scheme

An investigation initiated by the Construction Fraud Unit after its outreach to Plumber's Union Local One, established that a plumbing and heating contractor had filed false certified payrolls, and failed to provide the obligatory prevailing wages and benefits to workers on the South Ferry Terminal project and various NYC Transit projects. The contractor pleaded guilty to one count of Offering a False Instrument for Filing in the First Degree. The defendant paid \$70,000 to the Office of the New York County District Attorney, \$15,000 of which was paid to the OIG for the cost of investigation. Additionally, the defendant paid \$270,000 to Plumber's Local Union One for underpaid workers' benefits. Finally, the New York City Comptroller's office filed a lien on the project retainage for the purpose of reimbursing workers for the prevailing wage underpayment. The Comptroller's office matter is still pending.

Website Offering Discounted EZ Pass Tags Defrauded EZ Pass Agencies

A joint investigation involving the Office of the MTA Inspector General, the Secret Service, the Inspector General for the Port Authority of New York and New Jersey, and the Office of the United States Attorney for the Southern District Attorney of New York, culminated in the arrest and federal charges against two alleged high-tech thieves for engaging in a \$6 million internet-based credit card fraud scheme. As part of their scheme, the two defendants used stolen credit cards to purchase EZ Pass tags and credits, which they then resold. In total, they allegedly compromised more than 1,400 credit and debit cards, attempting to charge more than \$6 million to these accounts. A federal grand jury filed an indictment charging the two individuals with the crimes of Conspiracy to Commit Access Device Fraud and Aggravated Identity Theft, both felonies. The case is awaiting trial.

Trucking Companies Defrauded Union Benefit Funds

OIG's Construction Fraud Unit, along with its partners at the US Department of Transportation Inspector General, US Department of Labor Inspector General, Port Authority of New York and New Jersey Inspector General and the NYC Business Integrity Commission, determined that the principal of a trucking company on one of the MTA's major capital projects also operated a second trucking company that had signed a collective bargaining agreement with Local 282 requiring it to pay union wages and

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benefits. The principals conducted business under the name of the non-union company on several projects in order to avoid paying its workers the contractually-obligated union wages and benefits.

CFU and its partners referred the case to the Office of the United States Attorney for the Eastern District of New York. A grand jury filed an indictment charging five defendants with various crimes. Three of the defendants pleaded guilty to Conspiracy to Embezzle from Employee Benefit Plans, one pleaded guilty to Health Care Fraud, and the fifth to Receipt of Unlawful Payments by a Union Representative, all felonies.

Deceased Pensioners

Following a referral from MTA Audit Services, an OIG investigation established that two different LIRR pensions continued to be paid after the death of the respective pensioners' beneficiaries. In one case, our investigation established that the relative of a retiree's beneficiary received 27 months of pension payments totaling \$16,820 before the LIRR was notified of the beneficiary's death. We referred the matter to the Office of the Queens District Attorney. Thereafter, the relative was arrested and charged with Grand Larceny in the Third Degree, a felony. He was released on bail, subsequently absconded, and a warrant has been issued for him.

In the second case, the nephew of the retiree's beneficiary collected \$81,000 in LIRR pension payments following the death of the beneficiary. The nephew also collected the beneficiary's Social Security and Railroad Retirement pension payments. The Office of the United States Attorney for the Southern District of Georgia filed a civil complaint alleging violations under the False Claims Act for the Social Security payments (\$101,700) and Railroad Retirement payments (\$11,489). Pursuant to a settlement agreement, the nephew agreed to repay the United States \$113,189. Federal and state authorities declined to prosecute the nephew in connection with the LIRR pension payments largely because of the federal prosecution and his age (74).

NYC Transit Supervisor Stealing Time

The OIG conducted a joint investigation with the Office of the New York County District Attorney into allegations of grand larceny and other related crimes committed by a supervisor working in the NYC Transit Department of Signals. This investigation included the use of a court approved warrant to install a GPS device on this employee's personal vehicle. Surveillance revealed that although the supervisor's time sheets reflected that he was on duty, he was actually shopping, driving out of state, spending time at his home, and otherwise not doing his job. The supervisor pleaded guilty to Grand Larceny in the Fourth Degree, a felony. He was sentenced to a conditional discharge and made restitution of nearly \$20,000, representing the amount of money he

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stole from NYC Transit by falsely claiming that he was working. He also resigned from NYC Transit in accordance with his plea agreement.

Vulnerabilities of MTA New York City Transit Car Inspector Exam 8080
(MTA/OIG #2012-07)

The OIG investigated bribery allegations against two former NYC Transit employees. According to the allegations, these employees accepted payments to ensure that job candidates could pass Car Inspector Exam 8080, a practical examination that requires the candidates to perform a series of job related tasks. At OIG's invitation, the Office of the New York County District Attorney (DANY) joined the investigation. Thereafter, OIG and DANY found that these employees had indeed accepted payments from job candidates in return for just such a guarantee, although we found no evidence that these employees had actually secured passing grades for those candidates. As a result of our joint investigation, one employee pleaded guilty to one count of Bribe Receiving in the Third Degree and the other pleaded guilty to one count of Bribery in the Third Degree, both felonies. The first was sentenced to a five-year period of probation and ordered to forfeit \$20,000; the other was sentenced to imprisonment for six months as a condition of and concurrent with a five-year period of probation and ordered to forfeit \$20,000. NYC Transit fired both employees.

Beyond the specific criminal conduct we discovered, our investigation also revealed systemic vulnerabilities that could have facilitated tampering with grades by others involved in the testing process. These vulnerabilities involved test preparation and security, as well as exam administration, scoring and post-exam procedures. Indeed, OIG investigators found that practical exam performance scoring sheets had been changed, but because controls were so weak it was impossible to be certain who made each of the changes, at what point in the process the changes were made, the reason for each change, and whether and to what extent each change was appropriate. OIG discussed these vulnerabilities with NYC Transit and made recommendations to ameliorate them, all of which NYC Transit accepted.

OTHER SELECTED INVESTIGATIONS

Report of MTA Inspector General Ongoing Review of 2009 Bus Fatality

In mid-September 2009, the OIG received a complaint from a "concerned citizen" regarding a particular Bus Operator. Specifically, the complainant reported observing the Bus Operator sending text messages on his cell phone while operating the bus, and stated that these messages were posted on Facebook (the social networking website). OIG promptly referred the complaint to the NYC Transit Division of Special Investigation and Review (SIR), which immediately commenced an investigation. As part of its

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investigation, SIR “interviewed appropriate NYC Transit personnel, performed a covert observation ride, and reviewed relevant documentation.”

During the covert observation ride conducted promptly following receipt of the complaint, the Bus Operator did not send any text messages. The SIR investigator did observe the Bus Operator engage in misconduct consisting of failing to display his badge while in passenger service; failing to wear his seatbelt while operating the bus; playing music from a radio on a ledge inside the operator’s area; and reading a newspaper while operating the bus, and while stopped at an intersection at a red light.

SIR also reviewed and analyzed the Facebook documentation provided by the complainant with the complaint. The language of the messages regarding pedestrians and bus passenger was quite disturbing, thereby raising questions about the operator’s fitness for duty.

Immediately following completion of the SIR investigation in mid-October, NYC Transit lodged formal charges against the Bus Operator based on the covert ride and the Facebook postings, including “acts detrimental to public trust, confidence and respect” and “Unsafe/reckless operation/navigating internet while operating a Transit Authority bus.” Thereafter, during its internal disciplinary process, NYC Transit sustained the charges and imposed dismissal. In accordance with his rights under his union collective bargaining agreement, the Bus Operator then sought relief from an impartial arbitrator, who rejected dismissal, instead imposing a “30 day record suspension” and ordering that the Bus Operator receive customer service training and be reinstructed in bus operations.

On November 4, 2009, during the morning rush period, the Bus Operator struck and killed a pedestrian. This death occurred on the operator’s first tour back from the training ordered one week before by the disciplinary arbitrator in place of the dismissal ordered by NYC Transit management. There was no evidence that the Bus Operator was “texting” or acting abnormally when he struck the pedestrian.

Promptly following the pedestrian’s death, OIG convened a series of meetings with the NYC Transit Office of System Safety (OSS) and other top NYC Transit officials. Specifically, we expressed concerns about the disciplinary process and about the need for NYC Transit to promptly and vigilantly address even the appearance that a bus operator is not able to perform his duties in a manner consistent with public safety.

During the course of our ongoing review, NYC Transit management informed us that it learned significant lessons from this tragic event itself, from the pointed recommendations by the OIG regarding arbitration and performance of duties, and from management’s own increased focus on assuring public safety. Indeed, immediately following the onset of our review, in a move designed to strengthen the agency’s ability to present a more effective case to the arbitrator and to win any appeal, the agency

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reissued its directive for formal written closing briefs in any arbitration involving dismissals or demotion. While these actions and assurances were surely encouraging, our review remained ongoing.

In the intervening years since the death, a number of related events have transpired including: a report by OSS concluding that the driver's operation of the bus was the most probable cause of the incident; a report by the Public Transportation Safety Board concluding that the death was preventable; a wrongful death action brought by the estate of the pedestrian in which NYC Transit conceded liability and the jury awarded damages resulting in a judgment of just over \$2 million against the agency; and approval by the Board of the New York City Employees Retirement System of the application for Disability Retirement made by the Bus Operator, who never again operated a bus after the pedestrian's death.

By the end of 2012, then, significant issues in this particular matter had been resolved by the OSS and PTSB reports, the retirement of the Bus Operator, and the agency's concession of liability in the wrongful death litigation. At the same time, regarding the more global issues surrounding this fatality, we conducted a final review with NYC Transit management to jointly explore and evaluate the agency's progress regarding what OIG sees as the three fundamental issues highlighted by this tragic event. These issues and NYC Transit's response are outlined below.

Issue 1: Protecting the Public in the Arbitration Process

Although we initially questioned NYC Transit's failure to appeal the arbitrator's ruling, our own research confirmed the difficulty under current New York State law of successfully appealing a decision by a disciplinary arbitrator. In one step toward improving its success at arbitration, NYC Transit immediately reissued its directive for formal written closing briefs as described above, and thereafter provided OIG with a number of sample briefs. We asked the agency to confirm what other steps have been taken to further strengthen the agency's ability to present a more effective case to the arbitrator and to win any appeal.

NYC Transit Response

The agency confirmed that it implemented a number of constructive improvements to the disciplinary process, including the following:

- NYC Transit and its unions negotiated a more stringent cell phone policy, which results in a 20-day suspension for a first cell phone offense and dismissal for a second offense committed within two years of the first. In order to ensure proper enforcement of the collective bargaining agreements in general and the new cell phone policy in particular, the DOB Division of

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Safety and Training and the OLR jointly chaired training sessions with DOB management. Additionally, the unions involved held “shop gates” to warn employees that they would lose their jobs for violating the cell phone policy. The agency reported that since the inception of the revised policy, there has been a large reduction in the number of cell phone infractions (discussed under Issue 2 below), and several terminations for those infractions have had a strong deterrent effect on other employees.

- NYC Transit and its largest union agreed to add 13 new arbitrators to the rotating panel. This agreement places new arbitrators in a six-month probationary status and affords NYC Transit greater flexibility to remove an arbitrator.
- Three of the new arbitrators have been designated to hear preventable accident cases and attended a two-day training center at the NYC Transit Department of Buses Training Center. The session was also attended by agency and union attorneys who handle preventable accident cases, as well as by representatives of upper management. Whenever a new arbitrator is appointed he/she must attend this training before hearing accident cases.
- The Office of Labor Relations (OLR) and the Department of Buses (DOB) “have placed a reinforced emphasis” on cases that involve safety issues for the riding public. Further, OLR and DOB upper management held joint training sessions for other DOB management to instill greater awareness of the arbitration process, as well as the need to write better and more thorough reports and charges.

Issue 2: Removal from Passenger Service Pending Dismissal

We questioned why the Bus Operator continued to operate his bus on 12 days following commencement of the NYC Transit investigation and was not removed from passenger service until the filing of charges, despite the nature of the complaint, the corroboration supplied from the outset by his own Facebook postings, and the conflicting message conveyed to the arbitrator by this continued service. We have since been informed that NYC Transit now takes operators out of service, sometimes even suspending and ordering them off the property, in the interests of public safety even before the filing of charges. We asked the agency to confirm these assurances.

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NYC Transit Response

The agency confirmed that it “has taken a proactive approach to safeguarding the riding and pedestrian public while we investigate serious accidents and safety violations. Specifically, operators involved in these incidents are held out of service, either without pay or assigned non-driving duties, during the investigation of their incidents . . . DOB has also held additional meetings with upper management of the Divisions to reinforce all policies in areas related to cell phones, preventable accidents, and safety, with special attention being given to dismissal cases and the need to hold employees out of service where appropriate, particularly in safety related cases.” NYC Transit further noted that “Managers have also been made aware of the contractual provision to place a bus operator, for whom the Authority is seeking dismissal from service, in a non-safety sensitive position pending completion of the Arbitration process.”

In support of these confirmations, the agency provided documentation and examples, including the following:

- Regarding five fatal accidents, four were rated preventable. In these four cases, two of the operators were dismissed at arbitration and two were demoted to non-safety sensitive positions. In all four cases, the operators never operated a bus in passenger service after the date of their accidents. In the case where the accident was rated not preventable, the operator was allowed to use his vacation and other accrued time during the investigation and then required to attend Performance and Evaluation Training to reassess his driving ability prior to returning to passenger service.
- Regarding four serious but non-fatal accidents, three were rated preventable. In one of these cases the operator was demoted to a non-safety sensitive position, while the other two were suspended for varying periods of time. The demoted operator did not operate a bus at any time following the accident. The two suspended operators, along with the operator whose accident was rated not preventable, were held out of passenger services following the accidents until the investigations were completed and the operators fulfilled Performance and Evaluation Training.

The agency further reported that aside from the cases highlighted above, subsequent to the pedestrian’s death, the agency “began to aggressively enforce its prohibition on the use of cell phones and Personal Electronic Devices by employees operating buses both in and out of revenue service. Through the use of undercover supervisory rides, concentrated safety blitz’s and routine supervisory observations from outside the bus, 351 violations were issued during 2009 with another 307 violations issued in 2010. Despite the significant progressive discipline resulting from these

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violations, including the dismissal of 19 operators, the use of cell phones by our bus operators did not appear to be improving. As a result in late 2010, the Department of Buses notified all of our [unions] that we [the Department of Buses] intended to implement a Zero Tolerance Policy on the use of Personal Electronic Devices effective January 2011.” The resulting “two-strike” policy imposes a 20-day suspension for first time offenders and dismissal for second violations that occur less than two years from the date of the first.

According to NYC Transit, “Implementation of the new Zero Tolerance Policy was complemented with a significant information/education campaign followed by enforcement efforts similar to those from 2009-2010. In 2011, the first year of the new policy, violations dropped to 95, a reduction of 73 percent from 2009. By 2012, violations had dropped further to 68, a 78 percent reduction from 2010 and an 81 percent reduction from 2009.” As further evidence of its enforcement efforts in 2011-12, NYC Transit noted that “During this period, 13 operators were dismissed under the terms of the negotiated policy. In all cases the operators dismissed under the policy did not work between the date of their second cell phone violation and the final disposition of their respective disciplinary cases.”

Issue 3: Ensuring and Documenting Ability to Perform Job Duties

We questioned why NYC Transit, despite the disturbing nature of the Facebook postings, never referred the Bus Operator to the NYC Transit Office of Health Services (OHS) for any type of psycho-social examination to assess his ability to perform his job duties, an important aspect of which was frequent interaction with the public. NYC Transit management assured us that the agency is now more sensitive to the need to make appropriate referrals to OHS for medical assessments of its employees pursuant to the agency’s longstanding Policy Instruction 6.44.1(E.2), which provides for such referrals “whenever there is an articulable basis for believing that the employee may be unfit to perform his or her job duties.” We asked the agency to provide documentation to support these assurances, including evidence of any increased awareness-training.

NYC Transit Response

According to the DOB Division of Safety and Training, during the training the Division provided to DOB upper management at several sessions, the Division specifically discussed and emphasized the need to make appropriate referrals to OHS and the type of information that OHS needs to perform an appropriate evaluation. Additionally, this information was discussed during the joint meetings held with general superintendents of the depots that were jointly chaired by the Division and OLR. The agency reported that “Based upon these efforts, there has been improved awareness of OHS’s role in certain situations which could affect the safety of our employees or customers, as well as an improvement in the quality of referrals for ability-to-perform

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examinations made to OHS when the need arises.” Consistent with these assurances, OHS also provided examples indicating sensitivity on the part of employees, from dispatchers to superintendents, with an articulable basis for concern, of the need to make referrals for examinations of another employee’s ability to perform his or her duties.

OIG will continue to work closely with the NYC Transit Office of System Safety and the Public Transportation Safety Board as appropriate to protect the public.

Unethical Employee Conduct in Connection with a Vendor
(MTA/OIG #2012-02)

OIG investigators received a referral from NYC Transit, Office of Vendor Relations, Division of Materiel, regarding concerns of both Vendor Relations and the NYC Transit Procurement Department regarding a Request For Information for potential suppliers of solid cast polymer compound for rail ties.

We found that a longtime NYC Transit track engineering manager had twice accepted meals from a vendor and also found that the official forwarded internal email to that same vendor, had inappropriate conversations regarding another potential vendor, and gave the initial vendor advice as to how he should negotiate with NYC Transit Procurement concerning costs for equipment rental. Further, we found that a subordinate of the manager twice accepted vendor-paid meals, on the same occasions and in the presence of his supervisor. While their meals were provided at group dinners, held in the context of out-of-town industry conferences they were attending at the time, these dinners did not meet the MTA All-Agency Code of Ethics rules for acceptable “Business Meals.”

Consequently, we found that the manager, his subordinate, and the vendor violated respectively the MTA All-Agency Code of Ethics and the MTA Vendor Code of Ethics provisions establishing zero tolerance for accepting gifts. We also found that the manager violated MTA Code of Ethics provisions regarding public trust and confidential information, as well as NYC Transit policies prohibiting certain contact with vendors. However, we found no evidence of a quid pro quo arrangement or that the individuals involved acted for personal gain.

We sent the report containing these findings, along with our recommendations, to NYC Transit. Specifically, NYC Transit took disciplinary action against each of the two employees. The manager was demoted and received a reduction in salary. He was also prohibited from participation in the procurement process except where his technical expertise is required and in that case his participation will be monitored by supervisory personnel. His subordinate received a ten-day suspension from duty, forfeiting two weeks of vacation days in lieu of suspension. Additionally, NYC Transit convened a Special Responsibility Hearing for the vendor who provided the meals. The vendor accepted responsibility for violating the MTA’s Vendor Code of Ethics, implemented

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corrective measures, and committed to ensuring strict adherence to the requirements of the Vendor Code.

OTHER INVESTIGATIVE ACTIVITIES

OIG Role in Monitoring Hurricane Sandy Recovery Efforts

As part of Hurricane Sandy recovery efforts, NYC Transit plans to spend over \$2.5 billion to replace equipment, make structural repairs, and further harden its infrastructure against future flooding. In order to ensure that monies are utilized with transparency and accountability, the OIG will examine these projects. Specifically, OIG investigators will attend Sandy project “kick-off” meetings to inform contractors and project managers about the OIG’s oversight role. Additionally, OIG will attend subsequent progress meetings and make unannounced construction site visits for compliance with legal and contractual requirements, including site security.

No. 7 Subway Line Extension Crane Accident

On April 2, 2012, the boom of a contractor’s crawler crane operating at the No. 7 Subway Line Extension Project on Manhattan’s west side collapsed, killing one worker and injuring several others. OIG sent investigators and other staff to the site to work with and augment the efforts of the other agencies, including NYC Department of Buildings (DOB) and the NYC Department of Investigation, as well as the Office of the New York County District Attorney.

OIG performed various functions including assisting in the execution of search warrants of the contractor’s offices following the accident. After DOB identified the particular crane components it deemed critical to the investigation, OIG served as a liaison to determine if any MTA agency had available resources for transport and secure storage (with guards and surveillance). Thereafter, OIG identified a suitable NYC Transit facility to which the components were brought and forensic examinations begun. Additionally, while components of the crane were removed to the secure facility, the massive crane itself needed to be at a location agreeable to all parties for continued forensic testing. OIG helped the parties involved by identifying a secure location within the project site that caused the least disruption to the project while allowing access to investigators.

OIG also assisted DOB in establishing a database of all cranes working on all MTA projects within city limits to ensure that all equipment was compliant with DOB standards.

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Prevailing Wage Actions

This year we continued our work in support of prevailing wage law enforcement. While a number of investigations are ongoing, others are currently with various prosecutors' offices awaiting indictment or other action. Additionally, we continue to work with the New York State Department of Labor and the New York City Comptroller's Office Bureau of Labor Law.

On another 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 to be audited. Once the audit is complete, with a focus on fraud detection, OIG staff provides its expertise and experience in prevailing wage investigations to assist in the preparation of the MTA Audit Services final report. Our combined efforts have helped to ensure that contractors are paying prevailing wages, and have led to significant recoveries by workers who had been underpaid.

In 2012, the MTA Auditor General completed three audits on contractors for Long Island Rail Road, Metro-North Railroad and NYC Transit. Each of the audits found prevailing wage violations, and recommended corrective actions, including payments to the employees affected.

Floor Checks

The Floor Check Program involves unannounced inspections by teams 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 2012, OIG investigators conducted 36 floor checks throughout the MTA Commuter District. OIG notified the respective agencies of any improprieties its checks revealed, and made recommendations for disciplinary action as appropriate.

The deterrent value of this long-standing proactive initiative is that employees throughout the entirety of the MTA family of agencies are well aware that they are subject to unannounced inspections at any time by an independent office providing oversight of the MTA. Over the years, OIG has received positive feedback on this program from upper management; indeed, management has itself referred potential floor check sites to OIG.

CONSTRUCTION FRAUD UNIT

DBE Task Force

As a result of the valuable work performed by our Construction Fraud Unit in the area of Disadvantaged Business Enterprise investigations, the United States Attorney for the Southern District of New York requested that OIG take a leading role on its DBE task force.

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.

In 2012, along with its other work, the task force obtained a settlement with two large prime contractors for DBE fraud on contracts with the MTA. The settlement resulted in a payment of \$6.5 million by the contractors to the federal government and \$1 million to the OIG. Additionally, we have a number of ongoing investigations with the task force.

Assistance Provided to MTA Agencies Regarding Contractors with Responsibility Issues

CFU is often called upon to assist NYC Transit Vendor Relations staff and other agency procurement offices in determining whether a contractor who is low bidder on a contract is also a "responsible" bidder, despite having adverse information in his/her background. In that regard, we often receive requests from MTA agencies seeking information and advice. Indeed, the information we provide may well provide the basis for conducting these hearings.

Specifically, when CFU becomes aware of adverse information regarding a bidder, we notify the relevant MTA agency procurement department, which then determines whether the information is considered "significant" or otherwise requires the holding of a responsibility hearing. We then attend and assist in the responsibility hearings as appropriate. The hearings often result in the imposition of a monitor paid for by the contractor to oversee the activities of the contractor on the MTA contract in question.

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“Kickoff” and Progress Meetings

CFU members attended more than 20 progress meetings on American Recovery and Reinvestment Act (ARRA) funded construction projects, in which CFU informs contractors and project managers regarding OIG’s oversight role. For example, contractors are 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 projects is a federal crime as ARRA projects are federally funded. The contractors are also made aware of their obligations related to certified payrolls, DBE submissions and change orders. In addition, CFU participated in 20 progress meetings on non-ARRA-funded projects.

Site Visit Program

CFU has continued its construction site inspection program, which consists of unannounced site visits to ensure compliance with legal and contractual obligations. During these site visits, CFU investigators ensure that the contractor maintains a safe and secure site, complies with prevailing wage laws, and employs only approved subcontractors.

Specifically, CFU investigators conduct on-site interviews with workers to determine the identity of their respective employers, confirm payment of prevailing wages, and also confirm that workers have proper identification and proof that they completed OSHA and track-safety training. The investigators also examine materials to determine the name of the companies to which they are shipped in order to ensure that the proper contractors are actually performing the work.

Monitors

CFU has assisted MTA agencies with the implementation of their respective monitor programs. More specifically, we have assisted MTA in the creation of the list of pre-qualified outside monitoring firms; in reviewing monitoring contracts for scope and oversight methodologies; in participating in MTA’s initial meetings with these monitors; in analyzing quarterly monitor’s reports; and in making recommendations on whether and when it is appropriate to end the monitorship. For example, during this past year, CFU recommended rejecting the request of a major contractor to end its oversight by the outside monitor. Based on CFU’s recommendation, MTA Capital Construction ordered the monitorship to continue.

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OIG Support for Monitoring and MTA's Small Business Federal Mentoring Program

As a result of one DBE investigation by CFU reported in 2011, the MTA received \$9.8 million from a major contractor as part of a civil settlement. Along with the distribution of this money, the OIG made recommendations to MTA as to how it might best be used. In 2012, a significant portion of this money is being used to fund three outside monitors to oversee high risk areas on three mega-projects: Second Avenue Subway, Fulton Street Transit Center, and East Side Access. CFU continues to review monitors' reports, identify issues, and communicate with monitors on a regular basis.

Additionally, a portion of the \$9.8 million share of the settlement is being used to fund the MTA's Small Business Federal Mentoring Program.

The MTA's Small Business Federal Mentoring Program (SBFP or the Program), the first such program in the United States to receive federal approval, is designed to stimulate the growth and development of small businesses, including MTA-certified Disadvantaged Business Enterprises. The focus and stated goals of the Program are to develop a larger pool of qualified contractors, reduce MTA's construction costs, and create local jobs within the small business community. The Program's components provide direct prime contract opportunities, access to small business loans, surety bonding assistance, technical assistance and classroom construction training.

OIG continues to take an active role in funding and supporting this Program through CFU's active role in criminal investigations and civil settlements.

UPDATES FROM 2011 REPORT

LIRR Retiree Occupational Disability Fraud

Since 2009, the OIG worked jointly with the Office of the United States Attorney for the Southern District of New York, 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 federal criminal 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 they were not entitled. Those initially charged included two doctors, an office manager, two facilitators, and seven LIRR retirees (including one of the charged facilitators). In May 2012, 10 more LIRR retirees were charged in the occupational disability fraud scheme followed by an eleventh in July and

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another 10 in September 2012. A total of 33 individuals have been charged in the federal complaint.

Construction Material Testing Investigations

In 2012, a concrete testing company and its president, indicted in 2011, pleaded guilty to Enterprise Corruption and Offering a False Instrument for Filing in the First Degree, both felonies. The president was sentenced to an indeterminate term of imprisonment having a maximum term of three years and a minimum period of one year, and paid \$50,000 in lieu of a \$2.8 million forfeiture judgment. Four of the company's employees, one of whom was a professional engineer who had also been employed by NYC Transit, pleaded guilty to Falsifying Business Records in the First Degree, a felony, and received 10 days of community service. A fifth employee pleaded guilty to Offering a False Instrument for Filing in the Second Degree, a misdemeanor, and was sentenced to a conditional discharge with required community service.

Also in 2012, the president of another firm investigated by the Manhattan District Attorney's task force, pleaded guilty to Offering a False Instrument for Filing in the First Degree. The company's principal engineer pleaded guilty to Offering a False Instrument for Filing in the Second Degree, a misdemeanor. As a condition of the firm's plea agreement, it agreed to a forfeiture of \$250,000.

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.

2012 highlights include:

- OIG, in conjunction with the MTA Department of Corporate Compliance, continued to provide ethics and fraud awareness training to MTA employees. The OIG explained its ongoing 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 28 such presentations to approximately 2,600 MTA employees this year — more than 2½ times the number of employees we addressed last year — encouraging them to report issues of wrongdoing to this office.
- Members of the Construction Fraud Unit gave a presentation to an audience of over 300 state and local officials and others in the audit and investigation industry at a conference at NYPD headquarters, which was sponsored by the NYC Comptroller’s Office and the Association of Certified Fraud Examiners. Numerous personnel from MTA agencies were in attendance. We were pleased to note that the presentation, on the prevention and investigation of construction fraud, was well received.
- The Chief of our Construction Fraud Unit gave a presentation on Prevention and Enforcement of DBE Fraud at the American Contract Compliance Association’s 26th National Training Institute in Philadelphia, Pa. Over fifty members of the association were in attendance including compliance officers from public entities nationwide and from various large contractors, including one doing business with the MTA. The Chief of Vendor Relations, New York City Transit, also took part in the presentation, which was also very well received.

INTERGOVERNMENTAL COOPERATION

During 2012, 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
United States Attorney for the District of New Jersey
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 Department of Labor Wage and Hour Division
United States Department of Labor Employee Benefits Security Administration
United States Railroad Retirement Board, Office of the Inspector General
United States General Services Administration, Office of the Inspector General
United States Postal Inspection Service
United States Secret Service
Eastern District of New York Federal Construction Fraud Task Force
United States Environmental Protection Agency
Inspector General Criminal Investigator Training Academy

Interstate Agency:

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

New York State:

Office of the Attorney General
Office of the State Comptroller
Office of the New York State Inspector General
Department of Labor
New York State Department of Transportation, Investigations Bureau
Dormitory Authority of the State of New York
New York State Police
New York State Thruway Authority
Public Transportation Safety Board

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Worker Compensation Board
Lower Manhattan Construction Integrity Team

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 Investigation
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

Other State Agencies:

New Jersey Office of the Attorney General
New Jersey Department of Environmental Protection
Pennsylvania Department of Environmental Protection
Pennsylvania Office of Inspector General

Other:

Long Island Labor Advisory Council
Nassau County Office of Consumer Affairs, Taxi & Limousine Commission
Washington Metropolitan Area Transit Authority, Office of the Inspector General