

State of Delaware
Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund

Financial Statement – Cash Basis

For the Year Ended June 30, 2011

Report Issued: January 30, 2014

State of Delaware
Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Table of Contents
For the Year Ended June 30, 2011

	<u>Pages</u>
Independent Auditors' Report	1-2
Financial Statement - Cash Basis:	
Statement of Cash Receipts and Disbursements	3
Notes to Financial Statement - Cash Basis	4 - 9
Supplemental Information:	
Schedule of Cash Receipts and Disbursements by Account	11
Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	12-13
Schedule of Findings and Responses	14-16

Zelenkofske Axelrod LLC

Independent Auditors' Report

To the Management of the State of Delaware Hazardous Substance Cleanup Fund
Dover, DE

We were engaged to audit the accompanying statement of cash receipts and disbursements of the State of Delaware Hazardous Substance Cleanup Fund ("Fund") for the year ended June 30, 2011. This statement of cash receipts and disbursements is the responsibility of the Fund's management.

We were unable to confirm beginning or ending cash balances because separate account balances are not maintained for each agency in the Delaware State Treasurer's investment pool. All of the Fund's money is held by the State Treasurer in those pooled funds. Beginning of year cash is stated at \$18,382,157 and end of year cash is stated at \$21,628,282 in the accompanying statement of cash receipts and disbursements for the year ended June 30, 2011. The cash balances directly relate to all reported amounts in the statement of cash receipts and disbursements. We were unable to satisfy ourselves about cash balances, cash receipts, and cash disbursements by means of other auditing procedures.

As discussed in Note B, the statement of cash receipts and cash disbursements was prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

As discussed in Note A, the statement of cash receipts and disbursements of the Fund are intended to present the cash balance, cash receipts, and cash disbursements of only that portion of the governmental activities of the State of Delaware that is attributable to the transactions of the Fund. They do not purport to, and do not, present fairly the financial position of the State of Delaware as of June 30, 2011, the changes in its financial position for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Because of the significance of the matter discussed in the second paragraph, the scope of our work was not sufficient to enable us to express, and we do not express, an opinion on this statement of cash receipts and disbursements.

In accordance with *Government Auditing Standards*, we have also issued our report dated December 19, 2013, on our consideration of the Fund's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Harrisburg	Lehigh Valley	Philadelphia	Pittsburgh
830 Sir Thomas Court, Suite 100 Harrisburg, PA 17109 717.561.9200 Fax 717.561.9202	1101 West Hamilton Street Allentown, PA 18101-1043 610.871.5077 Fax 717.561.9202	2370 York Road, Suite A-5 Jamison, PA 18929 215.918.2277 Fax 215.918.2302	3800 McKnight E. Drive, Suite 3805 Pittsburgh, PA 15237 412.367.7102 Fax 412.367.7103

Zelenkofske Axelrod LLC

We were engaged for the purpose of forming an opinion on the statement of cash receipts and disbursements of the Fund as a whole. The schedule of cash receipts and disbursements by account on page 11 is presented for purposes of additional analysis and is not a required part of the financial statement. Because of the significance of the matter described in the second paragraph, it is inappropriate to and we do not express an opinion on the supplemental information referred to above.

Zelenkofske Axelrod LLC

ZELENKOFKSKE AXELROD LLC

Harrisburg, PA
December 19, 2013

Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Statement of Cash Receipts and Disbursements
For the Year Ended June 30, 2011

Cash Receipts

Tax assessments	\$ 10,528,830
Cost recovery	2,198,393
Voluntary cleanup	125,177
Interest	112,034
Other	<u>3,530</u>

Total Cash Receipts 12,967,964

Cash Disbursements

Cleanup program	<u>9,721,839</u>
-----------------	------------------

Increase in Cash and Cash Equivalents 3,246,125

Cash and Cash Equivalents - Beginning of Year, as Restated (See Note G) 18,382,157

Cash and Cash Equivalents - End of Year \$ 21,628,282

Note A - Summary of Operations

In July of 1990, the State of Delaware (the State) legislature passed, and the Governor signed, legislation establishing the State's "Hazardous Substance Cleanup Act" (HSCA). This Act establishes standards to be followed to protect the public health and welfare of citizens and the environment of the State from releases of hazardous substances. The Act also provides a funding mechanism for the program.

The responsibility for administering the Act was vested in the Division of Air and Waste Management (the Division) within the Department of Natural Resources and Environmental Control (DNREC). Two branches were created within the Division: the Superfund Branch and the Underground Storage Tank Branch, which together make up the Hazardous Substance Cleanup Fund (the Fund). Both branches are funded primarily by a surtax on certain petroleum products sold in the State.

The State's Superfund Branch supplements the federal government's efforts in cleaning up hazardous sites. The most serious sites in the State become the responsibility of the Federal Government while those that meet lesser criteria become the responsibility of the State.

The Fund's activities are accounted for as a distinct operating unit within the Division. Accordingly, the financial statements of the Fund are intended to present the cash balance, cash receipts, and cash disbursements of only that portion of the funds of the State that are attributable to the transactions of the Fund.

The Fund is divided into three subfunds: The "Cleanup Fund" for the remediation activities of the Fund and the collection of tax assessments and other revenues, the "Administrative Account" for the administrative activities of the Fund as well as the cost recovery program, and the "Voluntary Cleanup Program" for the oversight of voluntary cleanup efforts. Funds are collected and deposited directly into the appropriate subfund where they sit until cash disbursements are made.

These financial statements present only the cash receipts, cash disbursements, and cash balance of the Fund, which includes hold appropriations 30078 and 30087, revenue appropriations 77801, 77802, 78701, and spend appropriations 67800, 67801, 67802, and 68700 and are not intended to present the financial position and results of operations of the State taken as a whole.

Note B - Summary of Significant Accounting Policies

Basis of Accounting

The Hazardous Substance Cleanup Fund's financial statements are prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. Under that basis, the only asset recognized is cash, and no liabilities are recognized. All transactions are recognized as either cash receipts or disbursements, and non-cash transactions are not recognized in the financial statements. Consequently, cash receipts from all sources are recognized when received, rather than when earned; and cash disbursements are recognized when cash is disbursed, rather than when the obligation is incurred. The statement of cash receipts and disbursements shows all of the cash balances, cash receipts and cash disbursements of the fund for the fiscal year ending June 30, 2011.

Note B - Summary of Significant Accounting Policies - Continued

Cash and Cash Equivalents

Cash and cash equivalents as reported on the statement of cash receipts and disbursements represents the Fund's allocated share of cash, cash equivalents and investments under the control of the Treasurer of the State of Delaware. All cash deposited with the Treasurer by state agencies is maintained by the State Treasurer in various pooled funds. The State Treasurer invests the deposited cash including cash floats in short-term securities and other investments. Interest income is credited to the Fund based on the Fund's average monthly remaining spending authority. Pooled investments represent those investments in units of a pool rather than specific securities. As a result, such investments are not categorized as to risk because they are not evidenced by securities that exist in a physical or book-entry form.

The Cash Management Policy Board

The Fund follows the "Statement of Objectives and Guidelines for the Investments of State of Delaware" of the State's Cash Management Policy Board (the Board). The Board, created by State law, establishes policies for, and the terms, conditions, and other matters relating to, the investment of all money belonging to the State with certain limited exceptions.

The investment guidelines, adopted by the Board provide, among other things, that no more than 10% of the entire portfolio may be invested in obligations of any one issuer other than the U.S. Government. Investments may be made only in fixed income instruments with maturities of up to five years in certain circumstances. The State's Cash Management Policy is available on the internet at <http://treasurer.delaware.gov>.

Note B - Summary of Significant Accounting Policies - Continued

Custodial Credit Risk

Collateralization Requirements: All State deposits are required by law to be collateralized by direct obligations of, or obligations that are guaranteed by, the United States of America, or other suitable obligations as determined by the Board, unless the Board shall find such collateralization not in the best interest of the State. The Board has determined the certificates of deposit and time deposits must be collateralized, unless the bank issuing the certificate has assets of not less than \$5 billion and is rated not lower than "B" by Fitch, Inc. Bank Watch. The Board has also determined that State demand deposits need not be collateralized provided that any bank that holds these funds has had for the last two years, a return on average assets of 0.5% or greater and an average equity-capital ratio of at least 1:20. If the bank does not meet the above criteria, collateral must consist of one or more of the following:

- a. U.S. Government securities;
- b. U.S. Government agency securities;
- c. Federal Home Loan Board letters of credit;
- d. State of Delaware securities; or
- e. Securities of a political subdivision of the State with a Moody's Investor Service rating of "A" or better.

Additionally, the bank must ensure that those securities pledged as collateral have a market value equal to or greater than 102% of the ledger balance(s) in the account(s) each day and ensure that securities pledged are identified as held in the State's name and are segregated on the bank's records.

Cash Receipts

The Fund's primary source of cash receipts comes from the levy of a 0.9% tax on all taxable gross receipts from the sale of petroleum and petroleum products, with the exception of crude oil.

Although funding is adequate to meet Department of Natural Resources and Environmental Control's (DNREC) annual expenditure plans and carryover funds exist, the cost of the future cleanup of orphaned sites exceeds the money available in the Fund.

State of Delaware
Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Notes to Financial Statement - Continued
June 30, 2011

Note C - Commitments

DNREC has identified over 755 sites in Delaware as potential hazardous substance release sites, some of which have been assigned a higher priority (identified as posing a risk to public health, welfare, and/or the environment). These sites are being addressed either under HSCA or under the Federal Superfund Program (National Priority List), with work complete at many of the sites. Additionally, since the inception of Delaware's Voluntary Cleanup Program (begun in 1993) and the Brownfields Program (begun in 1995), 311 sites have entered the program; 155 sites are currently undergoing cleanup; and 156 sites have been cleaned up for reuse. The cost of cleaning up the remaining sites exceeds the money available to the Fund.

Note D - Leases

On August 23, 2010 the Fund signed an amendment to an original lease dated January 23, 1998 for a cancelable seven-year operating lease agreement for office space located at 391 Lukens Drive, Riveredge Industrial Park, New Castle, Delaware. The amendment to the original lease commenced on November 1, 2010 and is cancelable only upon loss of funding. The total lease expense for the Fund for the year ended June 30, 2011 was \$309,134.

Future minimum lease payments under cancelable operating leases as of June 30, 2011 for the Fund are as follows for the years ending June 30:

2012	\$	329,023
2013		338,894
2014		349,061
2015		359,533
2016		370,319
Thereafter		<u>509,818</u>
Total	\$	<u>2,256,648</u>

Note E - Change in Legislation

House Bill 234 of the 144th General Assembly amended 7 Del. C. c. 91. to ensure that the tax surcharge imposed by HSCA is paid only once, regardless of how many times petroleum products are resold, for all petroleum gross receipts received after June 30, 2007. Previously, taxed petroleum products were reported by vendors on Form 9114W and attached to their gross receipts report.

Note F - Employee Benefits

Employees of the Fund are considered employees of the State of Delaware and are covered by pension, health insurance, and other employee benefit programs administered by the State.

The Fund contributes to the State Employees' Pension Plan (the Pension Plan). Total pension cost of \$218,004 is included in the financial statement. The Pension Plan is a cost-sharing multiple employer defined benefit plan that covers virtually all full-time or regular part-time employees of the State.

Certain significant Pension Plan provisions follow:

1. Retirement - Age 62 with 5 years of credited service; age 60 with 15 years of credited service; or after 30 years of credited service at any age.
2. Disability retirement - Five years of credited service.
3. Vested pension - Five years of credited service.
4. Contributions -
 - a. Employer - determined by Board of Pension Trustees.
 - b. Employee - 3% of earnings in excess of \$6,000.

Detailed information concerning the Pension Plan is presented in its publicly available annual basic financial statements, which can be obtained by writing the State Board of Pension Trustees and Office of Pensions at Suite 1, 860 Silver Lake Boulevard, Dover, Delaware 19904 or by calling 1-800-722-7300.

Information regarding the Other Post-Retirement Employee Benefit (OPEB) valuation is available in the State's comprehensive annual financial report.

Note G - Restatement of Cash and Cash Equivalents Balance

The Fund erroneously excluded appropriation accounts for Cost Recovery and Voluntary Cleanup in the June 30, 2010 financial statements. The cash balance as noted below has been restated to correct the beginning cash balance.

Cash and Cash Equivalents, beginning of year as previously stated	\$ 14,373,575
Restatement due to omission of appropriations	<u>4,008,582</u>
Cash and Cash Equivalents, beginning of year as restated	<u>\$ 18,382,157</u>

Supplemental Information

Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Schedule of Cash Receipts and Disbursements by Account
For the Year Ended June 30, 2011

	<u>Administrative Account</u>	<u>Cleanup Account</u>	<u>Voluntary Cleanup Account</u>	<u>Total</u>
Cash Receipts				
Tax assessments	\$ -	\$ 10,528,830	\$ -	\$ 10,528,830
Cost recovery	2,198,393	-	-	2,198,393
Voluntary cleanup	-	-	125,177	125,177
Interest	-	111,074	960	112,034
Other	1,395	2,135	-	3,530
Total Cash Receipts	2,199,788	10,642,039	126,137	12,967,964
Cash Disbursements				
Cleanup program	2,094,859	7,472,282	154,698	9,721,839
Increase/(Decrease) in Cash and Cash Equivalents	104,929	3,169,757	(28,561)	3,246,125
Cash and Cash Equivalents - Beginning of Year, as Restated	4,301,791	13,986,939	93,427	18,382,157
Cash and Cash Equivalents - End of Year	\$ 4,406,720	\$ 17,156,696	\$ 64,866	\$ 21,628,282

Zelenkofske Axelrod LLC

Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

To the Management of the State of Delaware Hazardous Substance Cleanup Fund
Dover, Delaware

We were engaged to audit the statement of cash receipts and disbursements, of the State of Delaware Hazardous Substance Cleanup Fund (“Fund”), as of and for the year ended June 30, 2011, and have issued our report thereon dated December 19, 2013. We did not express an opinion on the statement of cash receipts and disbursements because we were unable to confirm beginning or ending cash balances, as separate account balances are not maintained by the State. We were engaged to conduct our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

Management of the Fund, is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the Fund’s internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the statement of cash receipts and disbursements, but not for the purpose of expressing an opinion on the effectiveness of the Fund’s internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Fund’s internal control over financial reporting.

Our consideration of internal control over financial reporting was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as described in the accompanying schedule of findings and responses, we identified certain deficiencies in internal control over financial reporting that we consider to be material weaknesses.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies described as findings 11-1, 11-2, and 11-3 in the accompanying schedule of findings and responses to be material weaknesses.

Harrisburg

830 Sir Thomas Court, Suite 100
Harrisburg, PA 17109
717.561.9200 Fax 717.561.9202

Lehigh Valley

1101 West Hamilton Street
Allentown, PA 18101-1043
610.871.5077 Fax 717.561.9202

Philadelphia

2370 York Road, Suite A-5
Jamison, PA 18929
215.918.2277 Fax 215.918.2302

Pittsburgh

3800 McKnight E. Drive, Suite 3805
Pittsburgh, PA 15237
412.367.7102 Fax 412.367.7103

Zelenkofske Axelrod LLC

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Fund's financial statement is free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of amounts recorded on the statement of cash receipts and disbursements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards* and which are described in the accompanying schedule of findings and responses as findings 11-1, 11-2, and 11-3.

The Fund's responses to the findings identified in our audit are described in the accompanying schedule of findings and responses. We did not audit the Fund's responses and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of management and others within the entity and is not intended to be and should not be used by anyone other than these specified parties.



Zelenkofske Axelrod LLC

Harrisburg, PA
December 19, 2013

State of Delaware
Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Schedule of Findings and Responses
June 30, 2011

- 14 -

Finding 11-01

15% Administrative Costs Cap

- Criteria: Title 7 Subsection 9113(d) of the State of Delaware code states, “No greater than 15% of the moneys deposited into the Fund shall be used for administering this chapter without approval of the Joint Finance Committee”.
- Condition: Costs charged to the Administrative Account for the year under audit amounted to 16% of the monies deposited into the Hazardous Substance Cleanup Fund, which exceeded the 15% cap by \$149,664. No approval was given from the Joint Finance Committee.
- Cause: The Delaware Department of Natural Resources and Environmental Control looks at the monies deposited and administrative costs on a cumulative basis over the life of the fund instead of on an annual basis when considering the 15% cap.
- Effect: Costs charged to the Administrative Account for the year under audit that exceeded the 15% cap by \$149,664 were potentially unallowed costs. The internal controls did not prevent the Fund from exceeding the administrative cap for a fiscal year.
- Recommendation: The Delaware Department of Natural Resources and Environmental Control should review the 15% cap on administrative costs on an annual basis, seeking approval from the Joint Finance Committee for amounts over the 15% cap, or seek revision to current legislation clarifying the 15% cap can be calculated on a cumulative basis over the life of the fund.
- Management’s Response: We have looked at the 15% cap on Administrative costs to be cumulative over the life of the fund. Our records show that at the end of June 2011, the cumulative total for the 15% admin cap on total deposits was \$25,394,158 and the cumulative total spent for admin to date was \$20,244,483. This leaves a total available for admin costs of \$5,149,675.

State of Delaware
Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Schedule of Findings and Responses - Continued
June 30, 2011

- 15 -

Finding 11-02

Cash Reconciliations

Criteria: Title 7, Chapter 91 of the State of Delaware Code, the enabling legislation that created and governs the Hazardous Substance Cleanup Fund, also known as the “Hazardous Substance Cleanup Act” requires that funds collected under the act be maintained in a separate account, or series of accounts, that are dedicated solely to providing for eligible costs under the act.

Condition: The State is not able to provide a report that distinguishes cash balances by agency or department. The fund utilizes account coding within the State accounting system (FSF) to segregate the various funding streams of the program. However, as the State is unable to provide cash balances at the agency level that supports the FSF accounts, we were unable to verify that funds were properly segregated. As a result, we were unable to verify compliance with the aforementioned criteria.

Cause: The State is not able to provide a report or reconciliation that distinguishes cash balances by agency or department. Internal controls over segregation of cash at the State are not operating effectively.

Effect: Compliance with requirements of the Hazardous Substance Cleanup Act was not able to be verified, and cash balances during the year for the fund were unable to be determined.

Recommendation: The Fund and State should be able to provide a reconciliation of cash balances at the agency and department level that corresponds to the FSF accounting system to ensure funds are adequately segregated.

Management’s Response: It’s the Department’s opinion this is a State-wide system issue that we have no authority to change and/or correct.

State of Delaware
Department of Natural Resources and Environmental Control
Hazardous Substance Cleanup Fund
Schedule of Findings and Responses - Continued
June 30, 2011

- 16 -

Finding 11-03

Accounting Records

Criteria: The accounts of the Fund should include all cash balances, cash receipts, and cash disbursements in the period in which the transactions occurred.

Condition: As noted in Note G, beginning cash balances were restated by \$4,008,582 to record cash accounts that were erroneously excluded from the June 30, 2010, financial statements.

Cause: When preparing the June 30, 2010, financial statements, appropriations for Cost Recovery and Voluntary Cleanup were excluded from the financial statements.

Effect: The financial statements did not include all cash balances, cash receipts, and cash disbursements of the fund in the period in which the transactions occurred, which resulted in a material misstatement of the financial statements.

Recommendation: The Fund should ensure that internal control procedures over financial reporting, are sufficient to identify and record all material transactions in the proper period.

Management's Response: Due to the changing of State accounting systems, the omission of the Cost Recovery and Voluntary Cleanup funds was discovered. These funds were included in the FY11 Financial Statement and will continue to be included in future statements. Management will monitor the potential addition of HSCA appropriations and they will be included accordingly.