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Secretary of State

**INVESTIGATION OF ALLEGATIONS OF  
BUILDING CODE VIOLATIONS  
IN HARNEY COUNTY**



Audits Division

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*Auditing for a Better Oregon*

The Honorable John Kitzhaber  
Governor of Oregon  
State Capitol Building  
Salem, Oregon 97310

This report is the result of an investigation into allegations received through the Audits Division's Fraud, Waste, and Abuse Hotline. The report finds that the Department of Consumer and Business Services' (DCBS) failed to enforce certain building regulations in a timely manner for a manufacturing facility operated by a company in Harney County, the Safari Motor Coach Corporation. Although now in compliance, the company had operated for approximately a year and a half in a building without building permits or formal authorization to occupy the building. Civil penalties or other sanctions have not been levied, although, according to DCBS management, a civil penalty case is pending.

The state is responsible for monitoring and enforcing many state and federal laws intended to protect safety and health, including building regulations. State officials may attempt to work cooperatively with businesses to achieve compliance. In this case, however, DCBS' regulatory process was drawn out beyond a reasonable length of time.

In addition, this audit brings into question certain procedures, and the timeliness of actions, of the state's Occupational Safety and Health Division, the State Fire Marshal, and the Department of Environmental Quality.

OREGON AUDITS DIVISION

John N. Lattimer  
Director

End of Fieldwork Date:  
February 5, 1997



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## SUMMARY

During October 1996, it was alleged to the Oregon Audits Division that the Building Codes Division (BCD), a division of the Department of Consumer and Business Services (DCBS), had not enforced certain building code regulations in the Harney County city of Hines. The DCBS is responsible for the adoption, administration, and enforcement of the state's building code. Building regulations exist to protect the public's safety and health.

Beginning in January 1996, the Safari Motor Coach Corporation (SMCC) partially renovated a building and started a manufacturing operation without first submitting complete building plans, obtaining a building permit, and receiving a certificate of occupancy. The company's process uses flammable materials whose level of safety risk had not been fully established. After receiving warnings from the BCD, the company submitted preliminary plans for its renovation, but BCD plan reviewers found they were not complete and did not meet building code requirements. There was a disagreement over the occupancy classification of the facility. The BCD agreed to work with SMCC to find alternative solutions, consistent with the state's building code. BCD would not establish an occupancy classification or approve SMCC's plans until the company obtained scientific tests of certain flammable materials used in its manufacturing process. The tests, first recommended in April 1996, were not obtained by SMCC until May 1997. As a result, the plan review process continued for over a year while SMCC used the building and the materials in question for manufacturing.

State regulations say that construction or renovation work may not start until the building official approves the building plans and issues a building permit. A building may not be legally occupied until the building official conducts an on-site inspection, and issues a certificate of occupancy. Although the plant was in operation, it was not until July 1997 that the review process was completed, and building permits and a temporary certificate of occupancy were issued.

The SMCC project in Hines is a high priority project of the Oregon Economic Development Department (OEDD) which plans to support it with approximately \$1.13 million in public funds for the city and the company. The project was intended to create jobs in economically-distressed Harney County. This was in alignment with the governor's objective to create jobs in economically-distressed rural areas.

Along with the BCD, the state's Occupational Safety and Health Division (OR-OSHA), the State Fire Marshal (SFM), and the Department of Environmental Quality (DEQ) were involved in this case. While SMCC workers wore personal protective clothing and equipment and were not directly exposed to a serious respiratory hazard, OSHA found that the dust level in the work place exceeded legal limits; however, OSHA did not formally cite SMCC for the serious violations for almost five months. Also, the employees may have been exposed to fire hazards for many months because the SFM did not conduct an on-site inspection of the occupied building until March 1997, more than a year after manufacturing began. We also question DEQ's

## Summary

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action to issue an air contaminant discharge permit to SMCC while the company did not have a certificate of occupancy to legally use the building.

The state's actions may have set precedents that could have long-term detrimental effects on the state's ability to perform its regulatory duties. Specifically, the state's treatment of SMCC could result in demands by other regulated entities for similar treatment. Among other recommendations, we recommend that the BCD issue sanctions against the company, and that the SFM take action to determine if SMCC is in full compliance with the state's fire code.

## **INTRODUCTION**

### **BACKGROUND**

#### **Safari Motor Coach Corporation**

According to an Oregon Business Channel Internet publication, Safari Motor Coach Corporation (SMCC) is the 24th largest publicly-held Oregon-based corporation. In 1996, the company had manufacturing facilities in three Oregon cities and a city in Kansas, and approximately 1,200 employees.

SMCC is the parent organization of four Oregon-based subsidiaries: Magnum Manufacturing of Harrisburg, Beaver Motor Coaches of Bend, Electronic Design and Assembly of Bend, and Composite Technologies of Hines. Since January 1996, Composite Technologies has occupied approximately 58,600 square feet of the 172,000 square-foot building in Hines that is in question. According to BCD management, the company is starting another subsidiary, called Harney County Operations, in the same building.

SMCC is a fast-growing manufacturer of high-end motor coaches and recreational vehicles. According to an SMCC report, as of mid-1996 the company reportedly held 28 percent of the US market for high-end motor coaches, those priced above \$100,000.

#### **State Policy for Economic Development in Rural Oregon**

Oregon's policies for economic development were defined in a September 26, 1995 speech by Governor Kitzhaber. Among several issues presented, the governor identified the need:

To spread the benefits of growth geographically and socially so that we help create family-wage jobs not only in the Willamette Valley, but in rural Oregon as well.

One key to working this strategy was inducing:

...partnership and coordination of efforts among state and local agencies and between government and business, held together by a clear sense of the 'big picture,' a shared vision of the kind of future we want to create.

More recently, the Oregon Economic Development Commission, in its November 13, 1996 report to the governor, recommended that the state shift its focus from attracting business investments from outside Oregon to focusing more on areas of high unemployment--rural areas and economically-distressed urban districts--and small and existing Oregon businesses.

Harney County is an economically-distressed rural county. According to Employment Department statistics, as of August 1996, Harney County's unemployment rate was 8.2 percent, nearly twice the statewide unemployment rate. During 1996, the unemployment rate averaged 12 percent. The building in Hines purchased by SMCC was formerly a millwork building occupied by the Snow Mountain Pine Ltd. which closed its operations in March 1995, laying off 180 millworkers and 60 loggers, 10 percent of Harney County's non-farm workforce.

## **Oregon Economic Development Department**

The Oregon Economic Development Department (OEDD) is a cabinet-level agency, reporting directly to the governor. As is reflected by its mission statement--more and better jobs for Oregonians--the OEDD was created to help stimulate job creation in the state.

In October 1995, an OEDD employee assisted SMCC in reviewing industrial sites in eastern Oregon for a proposed manufacturing facility, part of which would be used to manufacture fiberglass articles. A site in Harney County was of particular interest to the OEDD because of the potential impact of bringing a 350-employee operation to the economically-distressed area.

According to a November 10, 1995 article in *The Oregonian*, SMCC announced plans to expand its motor coach manufacturing business to Harney County. The

company was negotiating with the OEDD for possible state financial assistance. A former deputy director of the OEDD was quoted as saying, “The facility needs road access, lighting, electrical power, water, sewer, and other infrastructure improvements.”

A November 21, 1995 article in *The Oregonian* reported that SMCC’s planned operations in Hines would generate 200 jobs within the year, with as many as 600 within two years.

On January 12, 1996, the OEDD offered a package of public financing totaling approximately \$1,132,000 to the city and the company. To obtain the state funding, SMCC was required to spend some of its own money, which included \$805,000 to purchase the building and land, and another \$2,245,000 to make improvements to the building. Also that month, Harney County officials worked with the OEDD to create a business enterprise zone for an area in Hines that included SMCC’s building.<sup>1</sup>

The OEDD provided a grant and loan award of \$882,000 to the city of Hines for improvements to water and sewer systems serving the industrial area. According to OEDD management, this award was made in April 1996.

The OEDD’s finance package to the company totaled \$250,000. This included a \$125,000 grant executed on January 14, 1997, and a \$125,000 loan offer. According to OEDD management, as of June 1997, OEDD has released to SMCC none of the \$125,000 grant pending resolution of the regulatory issues.

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<sup>1</sup> A business enterprise zone exempts from local property taxes the value of building improvements owned by qualified job-producing businesses. The exemption may last three to five years.

## **SCOPE AND METHODOLOGY**

During October 1996, the Oregon Audits Division received allegations about the state's Building Codes Division (BCD) through its Fraud, Waste, and Abuse Hotline.<sup>2</sup>

1. It was alleged that, since January 1996, the BCD administrator had not enforced state building code regulations by allowing Safari Motor Coach Corporation (SMCC) to operate a manufacturing plant in the Harney County city of Hines without obtaining necessary building permits or a certificate of occupancy.
2. It was alleged that the purported failure to enforce the legal requirements in a timely manner may have been encouraged by the Oregon Economic Development Department.
3. It was alleged that the BCD administrator did not use the findings of BCD plan reviewers who reviewed the SMCC plans. The reviewers believed that hazardous working conditions were proposed for the plant, and that the manufacturing area should be regulated under more restrictive building and fire code standards than SMCC wanted.

The objectives of this investigation were:

- To test the validity of the allegations;
- To determine whether SMCC management complied with certain state and federal regulations; and
- To determine whether state officials involved in the SMCC project enforced and complied with certain state and federal regulations.

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<sup>2</sup> The state's Building Codes Division, a division of the Department of Consumer and Business Services, is responsible for enforcing the state's building code to ensure uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort, and security of Oregon residents who are occupants and users of buildings.

To achieve our objectives, we:

- Reviewed authoritative guidance, including state and federal laws, rules, and policies, and assessed state agencies' compliance with regulations that related to our audit objectives;
- Observed and photographed the SMCC plant in Hines in October 1996 to confirm that it was in operation;
- Analyzed documents maintained by the BCD, OR-OSHA, the SFM, DEQ, and the OEDD, including building plans, inspection files, correspondence, reports, and contracts;
- Reviewed other pertinent data, including information provided to the public by SMCC, the BCD, the Department of Consumer and Business Services, the Occupational Safety and Health Division, the Oregon Economic Development Department, the Oregon Department of Environmental Quality, the Oregon State Employment Division, the Oregon Health Division, the federal Environmental Protection Agency, the federal Securities and Exchange Commission, Black & Company, and MEDLINE, a database of published medical research;
- Interviewed agency management and staff and obtained from them written responses to some of the information we obtained and some of our preliminary conclusions.

We limited our review to those areas specified in this section of the report.



## RESULTS OF INVESTIGATION

### BUILDING CODES DIVISION

Among its legal duties, the Building Codes Division (BCD), a division of the Department of Consumer and Business Services, is responsible for enforcing the state's building code in certain parts of the state.<sup>3</sup> The purpose of the building code is to facilitate the construction of safe, accessible, and energy efficient structures. The BCD is also responsible for providing oversight of local building officials to ensure that the state's building code is properly and consistently enforced.

Construction is regulated to ensure that structures will be built or renovated in compliance with the building code, and will be safe for the intended use of the facility. A building permit must be obtained before renovation and/or construction begins. To obtain a building permit, one must:

1. Submit an application and pay fees; and
2. Submit complete plans for review and approval.

To legally occupy a building:

1. The construction must pass on-site inspections. These inspections are performed to ensure that structures are built or renovated in compliance with the building code and according to the approved plans; and
2. The building official must issue a certificate of occupancy. The state's building code provides that a temporary certificate of occupancy, allowing the use of a partially completed

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<sup>3</sup> The Department of Consumer and Business Services is the state's largest regulatory and consumer protection agency. The department's divisions regulate insurance, banking, securities, building code, occupational health and safety, workers compensation, real estate appraisers, and energy.

For certain areas of the state, the BCD reviews plans, issues building permits, and enforces building code regulations. Until August 1996, the BCD performed these services for Harney County. At that time, BCD made an intergovernmental agreement with Harney County allowing it to contract building code enforcement duties to a private company, Inspections, Inc. of Ontario. The BCD retains responsibility for regulating SMCC's Composite Technologies project.

building, may be issued if the building official finds that no substantial hazard would result from the occupancy.

The Safari Motor Coach Corporation (SMCC) management did not apply for a building permit and submit complete plans for its building in Hines before starting renovations in January 1996. The company began using the building for manufacturing operations before it submitted complete building plans for approval, before a building permit was issued, and before a certificate of occupancy was issued. We observed in October 1996 that the plant was in operation. In mid-July 1997, SMCC's plans were approved and building permits and a temporary certificate of occupancy were issued.

### **SMCC Failed to Submit an Application Prior to Building Renovation**

According to a SMCC report, in January 1996, the company purchased a 172,000 square-foot building and 16 acres of industrial land in the city of Hines. That same month, SMCC began renovating the building without applying for a building permit.

A BCD file note indicates that on January 10, 1996, a BCD employee spoke with a SMCC vice-president to discuss the need for building permits and plan review. On January 11, 1996, a BCD building inspector conducted a site visit and found that work was being performed without a permit. The inspector gave the SMCC construction manager oral instructions to apply for a building permit from the BCD and receive approval before starting the remodeling work. On January 12, 1996, according to a BCD memorandum, a BCD electrical inspector noted that work was still being done on the building in Hines.

On January 24, 1996, a BCD inspector visited the Harney County site and found that renovation work was continuing without an approved building permit. The inspector again gave oral instructions to apply for and obtain a building permit and posted a "No Permit" notice on the building, prohibiting further work until a permit was issued.

In a January 31, 1996 letter to the BCD, a SMCC vice-president wrote:

Our objective has been to 'energize' the facility in a limited way, initiate limited production at the facility to begin to gain benefit from the building, and then assemble plans, make the necessary design drawings with the help of a consulting engineer, obtain construction permits and proceed with the more general improvements which do, necessarily, require the oversight and approval of the Building Codes Division.

The SMCC official also wrote that before SMCC acquired the site, it checked with local planning officials to ensure that the area was zoned for industrial uses. He was assured that the proposed use was allowed by the industrial zone district already in place. Further:

We were also assured that there were [no] impediments to initiating limited production at the site. In fact, these were specific conditions of the acquisition of the property.

The letter continued:

In order to avoid a possible 'showdown' over the issues of permits, certificates of occupation and our need to begin limited production, we would appreciate an expedited review and approval of the work proposed in the permit application.

I have also discussed our situation with the Oregon Economic Development Department, to keep them informed. As you know, providing jobs and business opportunity to Harney County is one of the governor's key economic objectives.

On February 2, 1996, a SMCC contractor submitted a building permit application and preliminary plans for the building in Hines. Because the plans were not complete, the BCD could not begin a plan review.

## **SMCC Failed To Comply With Building Code Requirements**

On February 14, 1996, a BCD inspector visited the SMCC building in Hines and discovered that the company was continuing to renovate the building without an approved building permit, and had begun using the building to manufacture fiberglass articles. The inspector posted a “Stop Work Order” and informed the company that it must obtain the necessary permits and a certificate of occupancy. A Stop Work Order prohibits further work until the violations are corrected and the Stop Work Order is removed. According to a BCD file note, on February 15 and 16, 1996, a BCD employee phoned the Oregon Occupational Safety and Health Division (OR-OSHA) and asked when the agency could visit the SMCC facility.<sup>4</sup>

According to BCD management, SMCC management complied with the Stop Work Order and stopped its building renovations. However, the company continued to use the building to manufacture fiberglass articles, even though it did not have an approved building permit or a permanent or temporary certificate of occupancy. According to DCBS management, the agency chose not to immediately impose sanctions, such as civil penalties or cease and desist orders, but chose instead to work with the company to resolve technical issues involved in the review and obtain compliance.<sup>5</sup>

On February 2, 1996, preliminary drawings for the SMCC project were submitted to BCD by a Burns-based engineering and surveying firm. On February 16, 1996, a BCD plan reviewer discussed preliminary drawings and

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<sup>4</sup> The state’s Occupational Safety and Health Division, a division of the Department of Consumer and Business Services, is responsible for conducting inspections and enforcing regulations pertaining to workplace safety.

<sup>5</sup> BCD policy 3-04 establishes enforcement guidelines to ensure uniform compliance with the state’s laws and rules. The policy requires that oral or written warnings are to be given first when a violation presents no significant safety problem, or if the violator is obviously unaware of the code requirements. The policy then lists, in the following order, enforcement measures that may be used for building related violations, and/or instances where health and safety are at risk:

- Civil penalties;
- Stop Work Order;
- Notice of Proposed Assessment of Civil Penalty;
- Cease and Desist Orders (enforced through a court’s contempt powers); and
- Injunctions (may only be issued by a judge and requires a petition to the court).

building code issues with a SMCC vice president. Reportedly, the plan reviewer said that SMCC would "...need to have a design professional (architect or engineer) involved in the process as the professional of record whose job by law is to explore options while ensuring the renovations meet code." On March 19, 1996, BCD received its first set of construction plans from the architect of record for the project, a Eugene-based architectural firm.

On February 20, 1996, the inspector who posted the Stop Work Order filed a compliance report on the SMCC project. The report stated that the building was being used and occupied without a permit. As of October 17, 1996, BCD's compliance file on the project contained only one entry in addition to the inspector's initial reports. The entry, dated August 16, 1996, was a BCD employee's written request to close the compliance file. The BCD administrator attached a note to the request indicating that the compliance file was to remain open.

### **Disagreement Over Occupancy Rating**

One of the key decisions building officials make in reviewing construction plans is determining the occupancy rating of the proposed structure. This rating establishes the safety requirements for construction of the building. Determining a building occupancy rating depends on what the building will be used for, what equipment is available for safe operation, whether or not hazardous chemicals are present, and how materials are controlled and stored. For example, a structure that will be used for general business purposes (e.g. offices, stores) may receive a "B" (Business) occupancy rating, and will need to meet certain safety requirements prior to occupancy and use. A "B" rating may also be given to parts of a factory or workshop where highly flammable materials are not used.

On the other hand, all or part of a structure that will store and/or use certain quantities of highly flammable and/or other hazardous materials may receive an "H" (Hazardous) occupancy rating, and will need to meet stricter safety requirements prior to occupancy and use.

The extra requirements could involve, for example, improved ventilation and fire sprinkler systems, and could prohibit the use of heating devices that could ignite flammable vapors and particles.<sup>6</sup>

The preliminary drawings submitted to BCD showed a “B” occupancy rating for the manufacturing area. Four BCD plan reviewers conducted an initial code interpretation of the proposal.<sup>7</sup> In a February 26, 1996 signed memorandum to BCD management, the four BCD plan reviewers jointly concluded that the proposed amounts of flammable and hazardous liquids in use required the manufacturing area (approximately 56,600 square feet) to be reviewed according to an “H” occupancy rating. Offices, rest rooms, and other areas not exposed to the flammable and hazardous liquids could be considered for a “B” occupancy rating. The plan reviewers also suggested that the manufacturing area could be classified as a “B” occupancy if it complied with “H” occupancy classification standards. One set of preliminary drawings showed that SMCC would store and use 12,822 gallons of flammable liquids inside the building. This included 822 gallons stored in containers and 12,000 gallons stored in two 6,000-gallon tanks.

SMCC management contested the plan reviewers’ conclusion that an “H” occupancy rating was warranted and asked the BCD to apply a “B” occupancy rating to the entire manufacturing area. According to BCD officials, SMCC’s argument for a “B” occupancy for the Hines facility was based on the recommendations of the company’s consultants, and the fact that a “B” rating had been applied to SMCC’s two other Oregon manufacturing facilities. The BCD administrator also indicated that SMCC was concerned that an “H” occupancy rating could require the company to conduct its spraying of fiberglass materials inside spray booths, as specified by the fire

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<sup>6</sup> Each of the occupancy rating categories contains sub-categories to further define risk hazards. For example, the “B” rating includes the B-2, B-3, and other sub-categories. The “H” occupancy rating includes H-2, H-3, and other sub-categories.

<sup>7</sup> According to BCD policy 3-05, initial code interpretations are decisions for a particular project (permit application, plan review, inspection) based on the staff person’s (field inspector, plan reviewer, or code specialist) understanding of the code. The rule states: “Initial code interpretations bind the division in situations such as project approval and alternate methods because staff is acting based on delegated powers from the division.”

code.<sup>8</sup> However, the fiberglass articles manufactured at the plant, some up to 45-feet in length, were too big to fit into a standard-size spray booth.

### **Contractors Hired to Review Plans**

According to a BCD file note, on February 28, 1996, BCD officials met with representatives from SMCC and OEDD to discuss alternative plan amendments. The note said the SMCC official left the meeting indicating that SMCC did not agree with the proposed building renovations.

The BCD administrator subsequently initiated a review of alternative methods of construction for the SMCC facility. According to the administrator, the review was begun at SMCC's request. Alternative design and construction methods are allowed by Section 105 of the 1991 building code edition used at that time. The building official is required to find that the proposed alternate method is at least equivalent to the prescribed code in "suitability, strength, effectiveness, fire resistance, durability, safety and sanitation." The BCD hired an engineering consultant, Larry Fluer,<sup>9</sup> to review the plans and provide recommendations.<sup>10,11</sup> According to Fluer, BCD asked him: "If the [SMCC] occupancy is other than Group B, Division 2 (B-2) what must be done to achieve a B-2 occupancy within the factory operation?"

On April 23, 1996, Fluer issued a preliminary report that described many technical issues to be resolved before the plans could be approved. Among other conclusions, the

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<sup>8</sup> In this report "fire code" refers to the Oregon Uniform Fire Code.

<sup>9</sup> Larry Fluer is owner of Fluer Inc. which specializes in codes/standards, building safety, hazardous materials, and compressed gasses consulting.

<sup>10</sup> According to BCD management, building officials use consultants for a variety of reasons including review of complex plans, and for expert advice when reviewing projects where hazardous chemicals are involved. Larry Fluer is considered by BCD management to be an expert in hazardous occupancy classifications and in hazardous materials. BCD management states that the division has well-qualified plan review staff, but they lack expertise in hazardous materials classification and in alternatives in handling hazardous materials in construction.

<sup>11</sup> According to the BCD administrator, the cost of the consultant's services will be charged to SMCC as part of the state's plan review fee.

consultant wrote that the manufacturing area warranted an “H” occupancy rating because the proposed quantities of hazardous materials in use exceeded the regulatory limits. Fluer also suggested alternatives that would allow the company to reduce fire risks in the manufacturing area, possibly allowing the area to be reviewed under a “B” occupancy rating. Among his alternatives, the consultant recommended that spraying operations be conducted within approved spray booths as is required by a state fire code requirement. He also recommended a reduction in the quantity of flammable materials stored inside the building in 6,000-gallon tanks.

Fluer also recommended that an independent laboratory test the reactivity of the liquid chemicals actually used by SMCC. Such testing would confirm the fire and explosion risks of the materials in use, thereby establishing the appropriate occupancy classification. This information was needed to determine the quantity of the materials that could be stored inside SMCC’s building.

BCD management concurred that a final decision on SMCC’s proposal, including the building’s occupancy rating, would not be made until the tests were done. The state did not take responsibility for ensuring that these tests were conducted. A BCD manager said that it was SMCC’s responsibility to find an independent laboratory to perform these tests. OEDD management informed us that it will reimburse SMCC for at least a portion of the cost of these tests. On November 13, 1996, we were told that the tests had not been conducted and were still under discussion. On February 5, 1997, we were informed that these tests still had not been started.

In a March 29, 1996 letter, SMCC’s architect stated that Ron Melott<sup>12</sup> of Melott and Associates, Inc., had been hired as SMCC’s consultant to review the building plans. OEDD informed us that it agreed to pay for at least a portion of this consultant’s services.

In an April 12, 1996 letter SMCC’s consultant, Ron Melott wrote that his final report and recommendations

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<sup>12</sup> Ron Melott is an Oregon-registered Fire Protection Engineer and the owner of Melott and Associates, Inc., which specializes in fire protection consulting.

would show that the plant's manufacturing area warranted a "B" occupancy rating, and that the smaller chemical dispensing and storage areas should be given an "H" rating. In addition, he wrote:

It is this fire protection engineer's opinion that the existing fiberglass moldings operation is not an undue hazard for a temporary situation.

In an April 19, 1996 report, Ron Melott recommended that the 56,600 square-foot fiberglass manufacturing area be assigned a "B" occupancy rating. He wrote:

...it is this fire protection engineer's opinion that the facility can be classified as a mixed use occupancy with the bulk of the area being a B-2 occupancy. Spray booths can be used in a B-2 area per [the 1991 building code] Section 503(a) Exception 1.<sup>13</sup>

In a May 17, 1996 memorandum, Melott said he recommended designating the fiberglass manufacturing area at a "B" occupancy rating because SMCC was controlling the quantities of flammable materials in use in the manufacturing area, the concentration of vapors, and sources of ignition. He also wrote:

A B-2 occupancy is defined in part as a factory or workshop using materials not highly flammable or combustible.

BCD's consultant, Larry Fluer, had an opinion that differed from Melott's. At the time, Fluer based his conclusions on sources showing that excess quantities of hazardous materials were proposed for the manufacturing area, and that these materials (e.g. styrene, methyl ethyl ketone peroxide, and acetone) were flammable, reactive, health hazards, or all three.

On May 24, 1996, the BCD administrator wrote to SMCC management that although the BCD had not yet received final plans for the project from SMCC's architect:

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<sup>13</sup> Section 503(a) Exception 1 states, "Where an approved spray booth constructed in accordance with the Fire Code is installed, such booth need not be separated from other Group H Occupancies or from Group B Occupancies."

Pending receipt of the plans to verify consistency with the report provided by Melott and Associates, Inc., we feel comfortable approaching the plan review with a B-2 occupancy with expanded spray areas, and H-2 and H-3 dispensing and storage areas.

On August 16, 1996, the BCD hired the International Conference of Building Officials (ICBO) to review the SMCC's plans for compliance with building, fire, and mechanical codes.<sup>1415</sup> On September 6, 1996, a senior regional manager for the ICBO submitted a report on the plans. He wrote that he conducted the review under the assumption that BCD was accepting the proposal as a B-2 occupancy. He recommended 71 modifications to the plans. The reviewer stated:

From all the information given, I am inclined to state that the manufacturing area is more like an H-2 occupancy than a B-2. I have checked similar uses in the past and checked them under the criteria for H-2. I also know of at least three such companies who have approached [the] local Board of Appeals in Washington with similar arguments but who have been turned down.

On September 29, 1996, Fluer issued a report to BCD management which concluded that SMCC's manufacturing area could be classified at a B-2 occupancy if modifications to the plans were made, including those recommended by ICBO. On October 2, 1996, Fluer recommended 28 plan alternatives that could allow SMCC to reduce operating risks in the manufacturing area and enable it to qualify for a "B" occupancy rating. As in his April 23, 1996 report, Fluer recommended alternatives for constructing spray booths that could meet the fire code requirements, and he again called for the liquid materials being used by SMCC to be tested by an independent laboratory. In late May 1997, over a year after Fluer's April 23, 1996 recommendation was made, the reactivity

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<sup>14</sup> The International Conference of Building Officials publishes the Uniform Building Code, Uniform Fire Code, and several other codes and building related reference materials.

<sup>15</sup> According to the BCD administrator, the cost of this consultant's services will be charged to SMCC as part of the state's plan review fee.

tests of SMCC's liquid chemicals were completed and reported to SMCC. In a June 14, 1997 report on the test results, Fluer wrote that, for storage and use from containers of 55 gallons or more, the liquid materials were classified in the higher fire code risk category. When used from smaller containers in spraying operations, the materials were classified in the lower risk category. He concluded that the recommendations made in his October 2, 1996 report remained valid.

According to BCD management, among other changes consistent with state consultants' recommendations, the manufacturing area will be assigned a "B" occupancy rating and the 6,000 gallon tanks holding a flammable material will be moved to a detached building with an "H" occupancy rating.

In mid-July 1997, SMCC's plans were completed to reflect the final recommendations. At that time, building permits and a temporary certificate of occupancy were issued. SMCC had been operating in the building in Hines for approximately 17 months without approved plans, building permits, or a certificate of occupancy, but the BCD had not issued sanctions against SMCC for these violations.

In explaining why he did not seek an immediate sanction against SMCC, the BCD administrator explained that he did not believe that the SMCC operations were endangering the safety and health of the employees who worked there. His belief was based on SMCC's consultant's letter stating that the SMCC operation was not an undue hazard for a temporary situation, information received from OR-OSHA, and site visits by himself and other BCD staff. He also said that a court injunction was necessary to stop work at the SMCC plant. He said an attorney who works for the state's Department of Justice said it could take months to process an injunction to stop operations at the plant.<sup>16</sup> The BCD administrator agreed that the compliance file on SMCC related to permits and inspections remains open. He reported that "we often wait until after compliance has

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<sup>16</sup> We spoke with the state attorney who had spoken with the BCD. She stated that obtaining an injunction against SMCC could take several months, and that the decision whether to initiate this process was BCD's. To her knowledge, BCD had not initiated legal action against SMCC.

been achieved so that the magnitude of the violation can be determined.”

## **Conclusion**

The BCD administrator initiated an alternative methods and materials review of SMCC’s proposal, allowed by the building code, to find ways to address the company’s request for a less restrictive occupancy rating, while providing the appropriate level of safety under the building and fire code requirements. However, SMCC did not have building permits or a certificate of occupancy to legally use the building when this review was begun, and continued to operate without a certificate of occupancy while the review continued for over a year.

The BCD administrator’s actions in this case could have an effect on the agency’s ability to conduct and oversee building regulatory programs. Specifically, the treatment afforded to SMCC could result in demands by other regulated entities for similar treatment.

## **OCCUPATIONAL SAFETY AND HEALTH DIVISION**

The Oregon Occupational Safety and Health Division (OR-OSHA) administers the Oregon Safe Employment Act and enforces the state and federal Occupational Safety and Health rules, which establish minimum safety and health standards for all industries. OR-OSHA’s enforcement staff inspects workplaces for occupational safety and health violations and investigate complaints about safety and health issues on the job.

Under the Oregon Safe Employment Act (ORS Chapter 654.015): “No employer or owner shall construct or cause to be constructed or maintained any place of employment that is unsafe or detrimental to health.” According to ORS 654.067(1)(a), in order to carry out the requirements of the Oregon Safe Employment Act, the DCBS director is authorized: “To enter without delay and at reasonable times any place of employment” to conduct inspections and investigations.

ORS 654.071(1) states that if the DCBS director, or an authorized representative, becomes aware of a violation, they shall "...with reasonable promptness issue to such employer a citation, and notice of proposed civil penalty..." Section 3 of the law requires the citation and notice of proposed civil penalty to be issued within 180 days following DCBS's knowledge that a violation exists.

On February 22, 1996, the OR-OSHA field office acknowledged receiving a referral from the BCD, alleging safety and health hazards at the SMCC plant. The BCD reported visible levels of dust inside the building and a very noticeable odor similar to glue. OR-OSHA considered the BCD's referral to indicate an "other-than-serious" hazard and gave it a category "c" priority. For category "c" referrals, OR-OSHA procedures provide that any subsequent inspections are to be conducted within 120 working days.<sup>17</sup>

On April 17, 1996, 55 days after OR-OSHA received the BCD referral letter, an OR-OSHA compliance officer began a partial inspection at the SMCC plant in Hines. On the first day, the compliance officer performed routine inspection procedures including meeting with company representatives and employees, and observing operations. The compliance officer noted that many safety precautions were in place at the facility and that the company had a worker safety training program. The compliance officer also noticed that employees in the plant were wearing protective clothing and respirators.

The compliance officer collected air samples to measure workers' exposure to styrene, acetone, and dust. These samples were sent to the agency's Portland laboratory for testing. The laboratory returned the sample results to the compliance officer on April 29 and May 3, 1996. OR-OSHA calculations performed on the results showed the SMCC workers' exposure to styrene and acetone vapors were within legal limits.<sup>18</sup> The calculations also showed

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<sup>17</sup> OR-OSHA inspection procedures require a field office manager to assign referrals a priority classification. A referral classified as a serious hazard, is assigned a "b" priority, and any subsequent inspection must be conducted within 30 working days. A referral classified as an "imminent danger," is assigned an "a" priority, and an inspection must be conducted within 24 hours.

<sup>18</sup> For styrene, the state's exposure limit is 100 parts per million (ppm), based on an 8-hour time-weighted average of exposure. Because of errors we found in OR-OSHA calculations, we re-

two instances in which the dust level in the work place, generated by the cutting and sanding of fiberglass parts, exceeded legal limits and constituted serious violations.<sup>19</sup>

On May 15, 1996, the compliance officer explained in the closing conference with SMCC officials that OR-OSHA would be citing SMCC because of the company's failure to properly control dust levels. The compliance officer told the company that while employees were properly using personal protective equipment, appropriate engineering controls should have been instituted to meet safety standards.<sup>20</sup> According to OR-OSHA rules, where a standard requires engineering or administrative controls, a violation exists even if personal protective equipment is being used.

On September 26, 1996, 217 days after processing BCD's referral and 146 days after receiving the final laboratory results, OR-OSHA submitted to SMCC management a citation and notice of proposed violations. The time to issue the citation and notice of the proposed violations was in compliance with ORS 654.071(3) which requires such notice to be issued within 180 days following DCBS's knowledge of alleged violations.

We asked an OR-OSHA supervisor why it took almost five months to issue the inspection report and citations. We were told that after completing this inspection, the compliance officer, an experienced employee, was assigned to higher priority projects and did not have time to complete the SMCC assignment. The supervisor said

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calculated the data. For the four workers tested, their respective styrene exposures were 26.89 ppm, 41.3 ppm, 41.32 ppm, and 98.7 ppm.

For acetone, the state's exposure limit is 1,000 ppm. The laboratory data showed that the highest exposure for any of the four workers tested was 46.7 ppm.

<sup>19</sup> For total dust exposure, the state's limit is 10 milligrams per cubic meter (mg/m<sup>3</sup>). In this case, dust levels were as high as 35.6 mg/m<sup>3</sup> and 14.9 mg/m<sup>3</sup>; OR-OSHA cited these two cases as serious violations.

<sup>20</sup> According to federal rules, CFR 1910.1000(e), employers must first use administrative controls (training, compliance programs, etc.) and engineering controls (structural and mechanical improvements). If these do not achieve compliance with the regulations, worker protection equipment must be used. The OR-OSHA compliance officer determined that adequate engineering controls had not been used before protective equipment was used.

that OR-OSHA has a shortage of experienced compliance officers.

OR-OSHA imposed two \$195 fines for the two violations involving dust containing fiberglass particulates.<sup>21</sup> SMCC management contested OR-OSHA's findings. OR-OSHA held an informal conference on November 6, 1996 to consider SMCC's contest of the violations. We were told that the company did not correct the violations within the time allowed. The case was to go before the state's Workers' Compensation Board for a formal hearing in July 1997; however, the case was settled a few weeks before the scheduled hearing.

According to OR-OSHA management, the agency conducted the inspection of SMCC as it would have conducted any similarly situated inspection, the inspection was properly conducted, and it was conducted in the manner OR-OSHA usually conducts inspections.

## **Conclusion**

OR-OSHA complied with the requirements we reviewed that pertain to its inspection of the SMCC facility. However, we question the time allowances in state law and agency procedure that made it possible for OR-OSHA to comply with the requirements even though over 200 days elapsed between the time that the agency received the BCD-initiated referral and the time that the agency initiated sanctions. Over 300 days could have elapsed and OR-OSHA would still have been in compliance.

## **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

The Department of Consumer and Business Services is the state's largest regulatory agency. The DCBS's mission statement reflects management's approach to enforcing regulations: "To protect Oregon's consumers

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<sup>21</sup> ORS 654.086 states that any employer who receives a citation for a serious violation is to be assessed a civil penalty of not less than \$50, and not more than \$7,000 for each serious violation.

and workers while promoting a positive business climate in the state.”

According to a written statement by DCBS’s director:

We are continually re-evaluating our role as a regulatory agency. If we can provide consumer and worker protection in ways that are less restrictive to business, we want to find them.

ORS 455.110 (1) states that the DCBS director shall coordinate and generally supervise the adoption, administration and enforcement of the state building code. Also, ORS 654.003 authorizes DCBS to set reasonable, mandatory, occupational safety and health standards for all places of employment. In addition, DCBS is to have an effective program for enforcing all laws and other regulations intended to protect the life, safety, and health of employees.

We asked the DCBS director if the agency would pursue sanctions against SMCC for failing to follow the state’s building code requirements. The director said that he would not allow SMCC to continue operating if he felt there was a serious safety and health risk. In addition, he stated that he has considerable discretion as to when, where, and under what circumstances to enforce regulations. He also told us that the option of pursuing sanctions had not been ruled out.

According to the director, the agency:

...has been pursuing a solution that would bring the company into compliance, ensure worker and public safety, and at the same time maintain employment for nearly 200 workers in an economically disadvantaged area. If that solution is not reached, the DCBS continues to have the option of issuing sanctions. At no time was the option of pursuing sanctions eliminated.

The director also wrote:

I did instruct staff that it was essential that we review all options in order to arrive at the desired end result: compliance with the building code and public and worker safety. I was very clear that if we were to “lose” this plant—along with 200 jobs

for a disadvantaged economic region—it should be only after we have exhausted every alternative.

## STATE FIRE MARSHAL

The Office of the State Fire Marshal (SFM) is a division of the Oregon State Police. ORS 476.030(1) states: “The State Fire Marshal shall enforce all statutes and make rules relating to: (a) The prevention of fires. (b) The storage and use of combustibles and explosives. (c) The maintenance and regulation of structural fire safety features in occupied structures...”

ORS 476.150(1) states, “The State Fire Marshal and deputies, at all reasonable hours, may enter into all buildings and upon all premises, except private residences, for the purpose of inspection to ascertain if fire hazards exist therein or thereon.”

A 1987 Attorney General Opinion (No. 8184) states that the SFM does not have the authority to enforce building code regulations; however, the fire marshal and fire inspectors may furnish advice in the preconstruction approval process and in the course of construction, and that advice should be given substantial deference with respect to fire and life safety provisions. The opinion also states that storage tanks for flammable liquids are not structures regulated by the building code, but are subject to the review and approval of the SFM.<sup>22</sup>

Section 4506.2 of the Oregon Uniform Fire Code states, “Spraying operations involving the use of organic peroxides and other dual component coating shall be conducted in approved sprinklered spray booths meeting the requirements of Section 4502.”<sup>23</sup> An organic peroxide, methyl ethyl ketone peroxide, is used in fiberglass manufacturing.

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<sup>22</sup> According to the State Fire Marshall, it is responsible for reviewing tanks holding flammable liquids in excess of 1,000 gallons.

<sup>23</sup> Section 4502.2 of the fire code defines spray booth requirements. Among the requirements, Section 4502.2.1 states that spray booths shall be substantially constructed of steel or other approved noncombustible material.

According to an OR-OSHA compliance officer's comments regarding the April 17 and 18, 1996 SMCC inspection, the officer had questions about possible violations of the fire code. These included questions about the adequacy of airflow through the spray booths in use, the company's storage and dispensing of flammable materials, and its use of a 6,000-gallon tank holding a flammable liquid. The notes indicated that on May 20, 1996, the compliance officer contacted the SFM with these questions.

According to the SFM, storage of flammable liquids was not mentioned by the OR-OSHA compliance officer as an issue, and specific action by the SFM was not requested. The SFM wrote that it requested a copy of the OR-OSHA compliance officer's inspection report, but the report was not received.

On July 19, 1996, the SFM submitted to the BCD a report on its review of SMCC's building plans for the Hines plant. The SFM official stated that SMCC needed to address numerous fire and safety code items, and:

...it is apparent that the plans and information the applicant has submitted are incomplete and lack the information needed to review this project for conformance with the fire and life safety code.

According to SFM management, a site visit was going to be performed in October 1996 as part of a joint visit with the BCD. Reportedly, such joint efforts are SFM's typical approach; the fire marshal provides input for the BCD's consideration. The BCD official however, was unable to travel to Hines on the scheduled day, so the onsite visit was not conducted. A joint site inspection was conducted on March 18, 1997. The inspection identified eight violations of the fire code requiring corrective action. According to the fire marshal, he cannot determine whether SMCC is operating in compliance with all other applicable code regulations until the BCD has determined an occupancy classification for the building and completed its plan review.

## Conclusion

The SFM has complied with certain statutory and fire code provisions we reviewed by participating with BCD in the plan review process and by conducting an on-site inspection. Although additional inspections may be needed to confirm compliance, we believe the initial inspection could have been conducted in a more timely manner.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

The Oregon Department of Environmental Quality (DEQ) is responsible for protecting and enhancing Oregon's water and air quality and for managing the proper disposal of solid and hazardous wastes.

As is required by state and federal hazardous waste and air quality regulations, SMCC registered its Hines plant with the DEQ in January 1996.

On January 16, 1996, SMCC applied for a DEQ air contaminate discharge permit. On January 30, 1996, DEQ issued to SMCC a temporary air contaminate discharge permit allowing it to release emissions resulting from fiberglass manufacturing in the Hines building, from February 5 to April 4, 1996. In a January 30, 1996 letter to SMCC management, a DEQ regional manager wrote:

Oregon Administrative Rules (OAR) 340-14-050 allows the Department to waive the standard permit issuance procedures for unexpected or emergency situations. Due to your accelerated start-up schedule and the short lead time given the Department to issue the permit, the Department will issue this special permit.

OAR 340-14-050 allows the DEQ to issue temporary permits in emergency or unexpected situations; however, the rule does not provide guidance on what factors may constitute emergency or unexpected situations, or whether SMCC's "accelerated start-up schedule" and "short lead times given to the Department to issue the permit" would qualify.

Reportedly, at the time the temporary permit was issued, DEQ was not aware that SMCC did not have a building permit or a certificate of occupancy. DEQ management said that the agency does not seek information on building permits or occupancy approval on any permit application. The DEQ has a local government coordination process which requires the submittal of a Land Use Compatibility Statement that has been signed by the local land use authority.

The DEQ held a public hearing on March 6, 1996 to gather testimony on SMCC's proposed permit. We were told that local citizens gave testimony complaining about chemical odors being emitted from the SMCC plant. The DEQ modified the proposed permit to reflect the testimony. On April 3, 1996, the DEQ issued an air contaminate discharge permit to SMCC one day before the temporary permit expired and only two and one-half months after application.<sup>24</sup> Among other requirements, the company was instructed to build a 75-foot exhaust stack by June 5, 1996; an exhaust stack lower than 75 feet could be constructed if supported by air discharge modeling. SMCC was also required to limit its styrene vapor emissions to 5.48 tons per month or 52.5 tons per year.<sup>25</sup>

SMCC management contested the permit requirements. According to DEQ management, SMCC requested a permit addendum and provided justification for the addendum with a technical analysis from its consultant, CH2M Hill, and federal-state rule analysis from its legal consultant, Stoel Rives.

As a result of SMCC's request, DEQ proposed a permit addendum and held a second public hearing on May 30, 1996. DEQ issued a permit addendum on July 26, 1996 that set a more stringent styrene vapor discharge limit of 1 ton per week and 41.7 tons per year. The addendum requires SMCC to construct exhaust stacks if the new styrene discharge limits are exceeded,

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<sup>24</sup> A DEQ hearings officer told us that the process for obtaining an air contaminate discharge permit may take six to nine months.

<sup>25</sup> The SMCC fiberglass manufacturing area is ventilated primarily by several large fans that exhaust chemical vapors and particulates through the walls of the plant directly to the outdoors.

and/or if odor nuisance complaints are received and found to be valid.

## **Conclusion**

We question the validity of DEQ's basis for issuing SMCC a temporary air quality permit, and the timing. Once SMCC had the temporary permit, it began manufacturing operations in violation of the state's building code.

## **OREGON ECONOMIC DEVELOPMENT DEPARTMENT**

The state's laws describe OEDD's purpose as being to stimulate job creation in the state. The agency has the statutory authority to influence or challenge state regulatory officials' enforcement of state and federal regulations. According to ORS 285.038(1)(c), the director of the OEDD shall "intervene, as authorized by the [State Economic Development Commission], pursuant to the rules of practice and procedure, in the proceedings of state and federal agencies which may substantially affect economic development within Oregon."

In addition, ORS 285.255(2)(a),(b), and (f) require the OEDD to take action to "simplify the permit issuance procedure," "accelerate decision-making," and "provide methods to simplify, consolidate and coordinate and, where unnecessary, eliminate government regulatory activities to reduce the nonproductive time and expense government and the public must spend dealing with regulatory activities."

Furthermore, state regulatory officials are required to respond to the OEDD. ORS 285.260(2)(f) states that the OEDD director... "Upon request, shall mediate regulatory conflicts between state agencies and businesses in an attempt to resolve the conflicts. The department may require a state agency to cooperate in any attempt to mediate under this section."

## **Involvement in Regulatory Dispute**

According to OEDD management, since January 1996, the agency has sought to assist in resolving regulatory conflicts involving SMCC and the BCD. OEDD staff reported that the agency was aware of the building permit and occupancy issues in this case and that several factors contributed to the regulatory conflict and delays. These included:

- SMCC management told the OEDD that local officials did not inform the company that building permits were required for the project. No OEDD employees were present at the initial meetings between the company and local officials;
- No OEDD employees were present at SMCC's initial meetings with the BCD. SMCC management told the OEDD that at the beginning of the project the company was confused as to what the BCD would require to ensure the building plans were in compliance with the state regulations;
- SMCC management was concerned that state regulations were being interpreted differently in different jurisdictions. The company operates similar facilities in Harrisburg and Bend, where building code regulations are enforced by local officials. These other plants have been regulated under less stringent regulations than what the BCD was considering for the SMCC plant in Hines;
- The company was concerned that compliance with all regulatory requirements would cause it to miss its proposed construction deadlines; and
- In January 1996, SMCC management asked OEDD staff what consequences could result if the company refused to comply with some state and federal regulations. OEDD staff explained that failing to comply with applicable regulations could result in serious consequences. The company did not ask OEDD any further questions about this matter.

## Assistance Provided to SMCC

As was reported earlier, OEDD provided more than \$1.13 million in financial incentives to help enable SMCC to locate in Hines, which included a grant and loan award of \$882,000 to the City of Hines for improvements to water and sewer systems serving the area. Public funds intended specifically for SMCC included:

- An OEDD grant of \$125,000. To obtain the grant, SMCC is required to create 350 full-time equivalent jobs by December 31, 1999. According to OEDD management, this grant agreement was executed between OEDD and SMCC on January 14, 1997, but as of June 1997, OEDD has not released the \$125,000 grant pending resolution of the regulatory issues.
- An OEDD loan of \$125,000. According to OEDD management, as of February 10, 1997, this loan agreement had not been executed, but was still being offered. The OEDD agreed to forgive the loan if the following conditions were met:
  - ◇ The company begins production at its Hines facility no later than October 31, 1996;
  - ◇ The company completes its entire development project at the Hines facility by June 30, 1997; and
  - ◇ The company creates 350 full-time equivalent jobs at its Hines facility.

To obtain grant or loan funds, or both, SMCC was required to comply with the requirements of all applicable Oregon laws, rules, regulations and orders of any governmental authority, "except where contested in good faith and by proper proceedings." OEDD expects to amend the loan agreement to reflect a project completion date later than June 30, 1997, to ensure that regulatory findings are corrected.

## Conclusion

The OEDD appears to have operated within its authority to promote economic development in Oregon by providing advice and financial assistance to SMCC and

local government. The OEDD also has exercised its legal authority to intervene in regulatory matters by attempting to assist in resolving the regulatory conflict between SMCC and the BCD.

Until SMCC complies with the state's building codes, OEDD should not release the \$125,000 in grant funds and \$125,000 loan offer to the company.

## RECOMMENDATIONS

1. The governor and the Legislative Assembly should clarify priorities and performance expectations for state officials by resolving potentially conflicting goals of state economic development laws and laws governing state regulatory programs.
2. The Building Codes Division should issue civil penalties for SMCC's building code violations.
3. The Building Codes Division and the State Fire Marshal should conduct another compliance inspection at the Safari Motor Coach Corporation plant in Hines to determine whether the company is operating in compliance with all applicable building and fire code requirements with attention to the storage of flammable and reactive materials.
4. The Oregon Occupational Safety and Health Division should review its policies and procedures to ensure that inspection time requirements adequately protect worker health and safety.
5. The Department of Environmental Quality should define criteria for issuing temporary permits.
6. The Economic Development Department should withdraw its \$125,000 loan offer to the Safari Motor Coach Corporation, until the company is in compliance with all applicable state, federal, and local requirements. The department should work with the Department of Justice to determine whether it has sufficient grounds to rescind its \$125,000 grant contract executed with SMCC in January 1997, since the company has been in continuous violation of the terms of the loan and grant contracts.



**AGENCIES' RESPONSES TO THE REPORT**



**Director's Office**

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Oregon

DEPARTMENT OF  
CONSUMER AND  
BUSINESS SERVICES

August 19, 1997

John Lattimer, State Auditor  
Audits Division  
Secretary of State  
255 Capitol NE, Suite 500  
Salem, OR 97310



Dear John:

We have received the final draft of the report produced by your staff regarding the Safari Motor Coach Corporation and DCBS' regulatory activities. We would like to express our appreciation to your staff for their willingness to work with us on this important report. The result is, for the most part, an accurate portrayal of the events in this case.

As you are aware, the Department of Consumer and Business Services' mission is to protect workers and consumers. Among our most important goals is to ensure safe and healthy workplaces, and to see that new construction and remodeled facilities pose no threat to workers or others. In accomplishing this mission, we strive to minimize the cost of compliance on business, but at no time do we allow the safety and health of workers and consumers to be subordinated to purely economic interests.

To recap the points we made in our discussion:

- We chose to enforce the building code by opening a civil penalty action and then working with the company to achieve compliance. Based on what we knew at the time, we determined that the other choice, going to court in Harney County for an injunction, was less attractive. The length of time necessary to get an injunction (potentially several months) was a factor; we also felt that an injunction would not ultimately achieve compliance, but would simply shut down the plant. Since workers were not exposed to immediate health or safety risks, we determined that a civil penalty enforcement effort, which allowed us to maintain the leverage necessary to bring about compliance, was the appropriate course of action. We agree with your recommendation that the Building Codes Division continue to pursue civil penalties; that is being done.

As the report indicates, BCD remained engaged with SMCC management during this entire process working with the company and its consultants to identify deficiencies in the proposed design and to review and respond to numerous design packages. The basic issue in this case was the nature of the materials being used. Our plan reviewers originally arrived at a conclusion that turned out to be incorrect. It was necessary to bring in outside

experts (including a fire protection engineer, a hazardous materials consultant, the International Conference of Building Officials and a testing lab) to ensure that the materials' level of risk was properly understood and the company's building plans were appropriate. For a variety of reasons, the time involved in determining the nature of the materials under use and storage conditions was unreasonably long; we, too, were frustrated with the delays. We agree that steps should be taken in the future to be sure the experience is not repeated.

- ♦ While the controversy around building code enforcement proceeded, we asked DCBS' Oregon-OSHA Division to inspect the facility, based on a complaint involving dust and strong odor at the plant. The compliance officer to whom the complaint was assigned had particular expertise in this area. She knew that the chemicals in use emitted a strong odor, but were not necessarily hazardous. Accordingly, the complaint was given an "other than serious" classification. As a result, the complaint was--appropriately, as it turned out--given a lower-level priority status. This "triage" system in which referrals and complaints that appear to involve "serious" or "imminent danger" hazards are given higher priority, is designed to make best use of OR-OSHA's resources. The time frames relating to conducting inspections have been in place in statute and rule for some time and have not raised questions before now. Nonetheless, we agree that a review of those time frames may be in order to ensure that OR-OSHA responds to complaints in a reasonable amount of time.
- ♦ The state's economic development goals and regulatory requirements may at times offer potential for conflict. The Governor has instructed agencies to work together to be sure conflict does not surface. In early 1996, it became apparent that DCBS and Economic Development Department staff were not communicating well concerning new business projects. In this case, SMCC's confusion about regulatory requirements exacerbated the situation. Since that time, the two staffs have met and exchanged information, including contact names and numbers, and the directors of both departments have emphasized the importance of interagency collaboration.
- ♦ The report continues to hold out the possibility that this case is precedent-setting, and that other companies will demand preferential treatment based on the SMCC experience. We believe it is clear, however, that this is a unique situation that will not have a long term impact on the BCD administrator's ability to conduct and oversee building regulation programs. Few regulatory actions pose new complex technical issues, as this one did. Few regulatory actions encounter so many unforeseen difficulties. Each case is approached individually and on its own merits. We will continue to operate on the principle that the safety and health of workers and the general public is our first priority.

Again, I would like to thank you for your courtesies in allowing us to respond to this report. It has been an instructive experience, and we will incorporate what we've learned as we implement the recommendations in all future regulatory activities

Sincerely,



Kerry Barnett  
Director



July 18, 1997

Cathy Pollino  
Acting Deputy State Auditor  
Secretary of State Audits Division  
255 Capitol Street, NE, Suite 500  
Salem, OR 97310

Dear Ms. Pollino:

I am writing regarding the Audits Division's final draft report of the state's handling of the Safari Motor Coach Corporation location project in Hines, Oregon. We have reviewed the report with regard to the department's involvement with the company in helping to locate its new facility and have made specific recommendations for change, as outlined below.

- Your cover letter to the Governor indicates that you believe the Governor and Legislature should review and clarify performance expectations for state officials to resolve "conflicts between" economic development law and regulatory law. The wording of the letter would indicate that you believe there is a conflict between what we do as an agency and the enforcement activities of other agencies. Our role with other agencies is to encourage those agencies to perform their regulatory duties promptly and fairly; and we do not see that your report shows a problematic conflict. As we have stated in earlier discussions, this effort was not a particularly unusual situation, given our responsibilities or the responsibilities of other agencies. It was simply an unusually challenging situation to resolve. An old legal adage says "hard cases make bad law." We believe that the Governor and Legislature have provided statutory guidance that allows for a healthy balance between a good business climate in Oregon and high standards for protection of its workers and the public. If there are specific changes that you would recommend for review, it would be more helpful for all agencies to respond more clearly.
- In the Introduction regarding the "State Policy for Economic Development in Rural Oregon," we want to be sure that the reader will understand why we place such an important emphasis on special aid to rural Oregon. The opportunity for the State to effect a serious turn around of the high unemployment experience of Harney County made this location effort important. Your wording should indicate that Harney County's unemployment rate during 1996 was at 13 percent for the year, more than twice the state unemployment rate of 5.9 percent. Public officials have expressed support for special efforts in these distressed areas.

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503-986-0123 ■ TDD 503-986-0123 ■ Fax 503-986-0256



**Governor John A. Kitzhaber**

The department is an AA/EEO employer, in compliance with Section 504 of the Rehab. Act of 1973

- The department's support to the project would be accurately described as:
  - (1) Technical support and location siting expertise of the regional development officer and counsel of our regulatory advisor to assist the company with regulatory agencies to determine which agencies to deal with and what regulations would be of particular concern for resolution.
  - (2) On January 12, 1996, the department offered a package of financing to the City of Hines and the company totaling approximately \$1,132,000. To obtain the department resources, the company invested more than \$3 million to purchase the land and buildings and to make improvements for its new operation. The department provided a grant and loan to the city for improvements to the water and sewer systems serving the industrial area. The company was offered a \$125,000 grant and a \$125,000 loan to support the company's investment at the site. The grant was executed; and, according to terms of the agreement, funds cannot be provided until certain conditions are met. The loan was not executed. In both instances, funds were not be provided until the company and the regulatory agencies had reached agreement on the requirements to operate the facility within the laws and rules of Oregon. The company understood and agreed to all of these terms.

The State Building Codes Division now has authorized issuance of the final building permit and the temporary occupancy permit, and the company is preparing final architectural drawings to complete the building improvements to meet the regulations. The terms of the loan agreement with the company are being revised to assure all terms are within the final guidelines and conditions.

Safari Motor Coach now produces motor coaches with 220 employees and expects to have 300 employees by year end. In order to meet all terms of our agreements, the company is to employ 350 within four years; and the company expects to exceed that number.

Thank you for the opportunity to work with you in careful response to the concerns expressed by others as the State worked through this complex but worthwhile project for the City of Hines and Harney County. Please contact me if there are other questions or concerns.

Sincerely,

  
William C. Scott  
Director

c: Governor John A. Kitzhaber

July 10, 1997

DEPARTMENT OF  
STATE POLICE

Ms. Cathy Pollino  
Acting Deputy State Auditor  
Secretary of State Audits Division  
255 Capitol Street NE, Suite 500  
Salem, OR 97310

OFFICE OF STATE  
FIRE MARSHAL

**RE: INVESTIGATION OF ALLEGATIONS OF BUILDING CODE VIOLATIONS IN HARNEY COUNTY**

Thank you for the opportunity to respond to the final draft report of your review of the state's handling of the Safari Motor Coach Corporation (SMCC) project in Hines. I appreciate your considering and incorporating responses to previous drafts in this final document.

I believe staff has clarified that it was not an inconsistency regarding styrene polymers in the state's fire code, but rather inconsistencies in styrene polymer reactivity ratings in the Material Safety Data Sheets provided by SMCC, that led to the Building Code Division's (BCD) requiring a testing of hazardous liquid materials used in SMCC's manufacturing process. Nevertheless, as Mr. Fleur noted in his consultation to BCD, there are inconsistencies between two tables in the state's fire code related to acetone and other materials used in thermosetting plastic manufacturing operations. State fire marshal staff had previously noted this conflict, and it is being corrected in the adoption of the 1997 Oregon Fire Code by eliminating one of the tables. As with previous state fire code adoptions, the state fire marshal widely solicits input from both industry and regulators in drafting and adopting the Oregon Fire Code. This formal review takes place every three years and is currently underway for state adoption of the 1997 fire code.

Regarding our response time for the initial inspection, I do not dispute that it took some time for the state fire marshal to respond. Only fourteen deputy state fire marshals provide fire investigation, fire code consultation and enforcement, and public fire safety education services to Oregon communities across the entire state. Since staff is limited, priorities are set for code enforcement activities. For example, deputies are expected to conduct bi-annual inspections of all day care centers, residential care facilities, and public and private schools to ensure the safety of those least able to protect themselves from fire. Manufacturing plants are inspected when identified as a high priority need by the local fire chief or upon receipt of a complaint.

The deputy who serves Hines did his best considering his workload. From his Ontario office, this deputy serves a four-county district that covers nearly 28,000 square miles. Additionally, he



spends two to three days each week at the Snake River Correctional Facility, ensuring compliance with fire code requirements for the more than one million square foot expansion of the medium security prison facilities and the fifty percent expansion of the minimum security complex. He nevertheless took the initiative and then followed up for several months to coordinate a trip to Hines with the building official in order to conduct an inspection of the SMCC facility. In addition to the March 18, 1997, inspection, he reinspected the SMCC plant on July 1 and observed that all but one of the general fire code violations noted on March 18 had been corrected. He returned on July 8 to note the final correction and help SMCC interpret fire code requirements for a 6,000 gallon flammable liquid storage tank. The state fire marshal remains committed to continuing to work with BCD and SMCC to ensure full compliance with all applicable state fire code requirements at the SMCC plant in Hines.

I appreciate the Secretary of State Audit Division's review of the state fire marshal's fire protection enforcement responsibilities and actions. The state fire marshal employees and I take our statutory responsibilities seriously and will use your recommendations to review the adequacy of our staffing levels in mitigating manufacturing employees' exposure to possible fire and explosion hazards.

Again, your consideration in inviting comment on the draft report is appreciated.

Sincerely,



Robert T. Panuccio  
State Fire Marshal

July 18, 1997

DEPARTMENT OF  
ENVIRONMENTAL  
QUALITY

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Acting Deputy State Auditor  
Oregon Audits Division  
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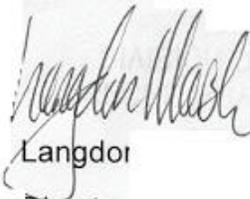
Dear Ms. Pollino:

We have reviewed the draft report prepared by your office on the state's handling of the Safari Motor Coach Corporation project in Hines. We offer the following comments on this draft report as it applies to the Department of Environmental Quality:

1. The comment on page 31, noting that the DEQ rule authorizing the issuance of temporary permits does not provide guidance on factors to qualify for such permits, is appropriate. This issue will be discussed by senior management and a decision whether to issue policy guidance or to consider a rule amendment will be made to resolve this issue for future use.
2. In the Conclusion paragraph on page 32, I suggest that the initial sentence that was struck, be included as it makes it clear that state and federal air regulations were applied under our legal responsibilities.
3. Also in the Conclusion, I suggest you strike all references to the issue of violations of the state's building code as we were unaware of this issue at the time of permit processing and we have no regulatory authority to consider such issues in our permitting process.

If you have any questions regarding my comments or this issue, please feel free to call me at 229-5301 or my Eastern Region Administrator, Stephanie Hallock at (541) 388-6146 x248.

Sincerely,



Langford  
Director

LM:ER/jh

cc Stephanie Hallock, DEQ, Bend Office



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