

AUDIT REPORT

Department of Environmental Quality: Change of Director Audit



Bill Bradbury, Secretary of State
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Summary

PURPOSE

This audit was conducted in compliance with *Oregon Revised Statute 297.210*, which requires the Secretary of State to review or audit any state department whose executive head leaves that position for any reason. The former director of the Oregon Department of Environmental Quality (department) was appointed on May 15, 1995 and resigned effective October 1, 2000. For further information on procedures performed, see the "Objective, Scope and Methodology" section of this report.

RESULTS IN BRIEF

- During our review of personal services contracts, we identified deficiencies that demonstrated that the department could improve its contracting practices.
- Our review of the former director's timesheets and travel claims showed that the department could also improve timesheet and travel review and approval processes.
- We determined that the former director returned all fixed assets assigned to him and that the department terminated his computer system access.
- We determined that neither the former director nor the employees whose timesheets he reviewed received any inappropriate payroll disbursements or leave accrual rate changes. We also determined that the former director was removed from the department payroll.
- We determined that the former director was not subject to any internal or external investigation or disciplinary action pertaining to legal compliance.

We reviewed the department's efforts to address recommendations we made in our 1996 audit report on the

department's hazardous waste program. The results of this review can be found starting on page two of this report.

Information regarding issues that we felt warranted the attention of the department but did not rise to the level where reporting in the audit report was required, were conveyed to the department in Management Letter No. 340-2001-10-01, dated October 26, 2001.

In addition, information concerning risks associated with the department has been conveyed to the department in Management Letter No. 340-2001-10-02, dated October 30, 2001.

RECOMMENDATIONS

We recommend that the department:

- Take steps to ensure that appropriate contract forms are used and contract wording is clear, complete and accurate.
- Work with the Department of Administrative Services, Controller's Division to develop written policies and procedures to implement the new rules concerning certain agency head transactions.
- Ensure that rules governing review and approval of director out-of-state travel are clearly understood and consistently applied.

AGENCY RESPONSE

The Oregon Department of Environmental Quality generally agrees with the recommendations. The department's specific responses are included in the body of the report.

Audit Results

Contracting Practices Could Be Improved

During our review of personal service contracts, we found weaknesses in the department's contracting practices. For example, five of the nine personal services contracts we reviewed had

deficiencies relating to contract form or wording.

We found that on four occasions the department used a letter agreement to procure the services of a hearing officer. State contracting rules require agencies to use a standard form when contracting for personal services, or obtain approval from the Department of Administrative Services prior to using an alternate form. We

determined that the hearings services provided in this case qualified as personal services and that the department did not obtain prior approval to use the letter agreement. We also noted that one of the four letter agreements was dated nearly one month after the hearing in question was held.

We also found the following deficiencies in contract wording. While these deficiencies were

relatively minor in nature, when viewed collectively, they demonstrated that the department could improve its contracting practices.

- In two cases, contract deliverables were due after the contract expiration date. In one of these cases, the contract had already been paid in full without the contractor having provided the deliverable.
- A contract exhibit that detailed how the contractor was to be paid contained two mathematical errors.
- One contract contained contradictory language concerning payment of travel expenses. It had wording that both allowed and disallowed such expenses.

We recommend that the department take steps to ensure that rules governing personal services contracts are followed and that contract wording is clear, complete and accurate. Contracts should be written so that deliverables are due before the contract expires. Before making final payment, the department should ensure that contractors have provided all required deliverables and that they meet contract terms.

Agency Response: *The department agrees with this audit recommendation. It should be noted, however, that all deliverables were received and accepted by the contract expiration date on one contract; all deliverables were received on the other, but after the expiration date; that the mathematical errors did not result in any incorrect or inappropriate payments; and that no travel expenses were reimbursed under the contract with contradictory language.*

Review and Approval of Time and Travel

We found that the department could improve its review and approval practices for director timesheets and travel. Specifically, the department should institute a higher level critical review process in accordance with state rules for all director timesheets, out-of-state travel and travel claims. A higher level review and approval process is an important part of an agency's control over time reporting and travel.

During our review of the former director's final six timesheets, we noted that none received a higher level review. Two of the six timesheets had no supervisory approval signature, while the former deputy director signed the remaining four.

In response to our findings in previous change of director audits, the State Controller's Division developed rules that address review and approval of certain agency head transactions, such as monthly time reporting and travel claims.¹ The rules require that agency heads appointed by or reporting to a board or commission work with that body to create a review and approval structure for these agency head transactions. Further, the rules allow the board or commission to delegate review and approval authority to the board or commission chair or ranking officer. Alternatively, the board or commission may delegate this authority to the agency second-in-command, chief financial officer, or may choose to retain an active role in the approval process. Finally, boards and commissions that delegate the review and approval process must review the approved financial transactions of the agency head at least annually.

¹ These rules are contained in *Oregon Accounting Manual* (OAM) policy no. 10.90.00.PO, which became effective July 16, 2001.

We noted that the former director traveled out of state 12 times during the period covered by our review. For five of these trips, the out-of-state travel authorization form used to document approval of such travel was either missing or had no approval signature. We also found that the remaining seven out-of-state authorization forms and all but three of the former director's travel claims did not receive a higher level review. Rather, they were signed by the former deputy director.² State travel rules in effect at the time did not specifically address review and approval of director out-of-state travel or travel claims. However, the travel rules were subsequently revised and now require agency heads to obtain prior approval for out-of-state travel from the Office of the Director, Department of Administrative Services through the use of the online travel request system.³ Moreover, as noted above, agency heads appointed by or reporting to a board or commission are now required to develop a review and approval structure for their travel claims, as well as other agency head transactions.

We recommend that the department:

- Work with the Department of Administrative Services, Controller's Division to develop written policies and procedures to implement the new rules governing review and approval of certain agency head transactions; and
- Ensure that rules governing review and approval of director out-of-state travel are clearly understood and consistently applied.

² The former deputy director, who was acting as interim director at the time, approved the remaining three travel claims.

³ For current travel rules, see OAM policy no. 40.10.00.PO, which became effective July 1, 2001.

Agency Response: *The department agrees with this audit recommendation and has already complied with new OAM 10.90.00.PO which became effective July 16, 2001. Briefly stated, the Management Services Division Administrator now reviews the Director's travel expense reimbursement claims, monthly time reports and other specific transactions enumerated in the policy. The Environmental Quality Commission will review the approved transactions annually and document their action in meeting minutes.*

It should be noted that no inappropriate trips were taken or no material reimbursement errors were made during the Director's tenure.

Update on Prior Audit Recommendations

As part of our audit, we reviewed the department's efforts to address recommendations we made in our 1996 audit report entitled *Department of Environmental Quality Hazardous Waste Program*, Report No. 96-20. This section summarizes the results of our review for those recommendations that we determined were not resolved.

To identify unregistered, non-reporting, and under-reporting generators, and to better account for hazardous waste being shipped for treatment or disposal, the department should:

- ***Obtain the Environmental Protection Agency's nationwide shipment data, as well as shipment data compiled by other states. Use the data to identify TSDs in other states that receive hazardous waste from Oregon generators. Work with those TSDs and state regulatory agencies to obtain reliable shipment information. Use the information to cross-match with Oregon generator registrations and reports of waste types and***

amounts shipped, and follow up to verify or resolve discrepancies.

No Action Taken (consider for future review)—Department management contended that due to differences in the type and detail of data collected by the Environmental Protection Agency and other states, this information would not be a useful tool. Accordingly, cross-matching hazardous waste shipment data with other states is not a priority and is not done.

To register more hazardous waste generators, the department should:

- ***Take enforcement action against large and small generators that fail to register and/or fail to submit accurate annual reports.***

Partially Resolved—Generators are cited for such violations in a notice of noncompliance only if the violation is discovered during a compliance inspection. The department does not generally take further enforcement action on reporting violations unless they occur in combination with other violations. Moreover, while generators may be penalized for non-registering and non-reporting violations if they are found in combination with other violations or constitute repeat offenses, the general policy is to not assess penalties for reporting or paperwork violations.

Department management said that generators who fail to report annually to the department become compliance inspection priorities for the regional offices. They also said that if non-registering or non-reporting is discovered during a technical assistance visit, state law precludes the department from taking any enforcement action.

Additional Action Recommended—The department should consider issuing a notice of noncompliance for all non-registering and non-reporting violations to the extent allowed under state law, and should take further enforcement action, including penalties, as appropriate.

- ***Strengthen efforts to identify generators by using local and state information resources, such as the database of organizations reporting to the State Fire Marshal. The department should consider mailing its annual reporting notices to the organizations that report to the State Fire Marshal but are not registered with the department, and then following up with those organizations that fail to respond.***

Partially Resolved—Department management told us that they reviewed the State Fire Marshal's database and contended that it cannot effectively be used because the facilities who are required to report are not necessarily hazardous waste generators. Besides a city database that is under development, department management did not know of any other local or state databases that would be useful for identifying generators. Department management said that utilizing other local and state information resources to disseminate annual reporting notices would not be a productive way to ensure that generators register with the department.

Additional Action Recommended—The department should continue to identify and evaluate external information resources, including local and state government databases, to notify potentially unregistered generators of their responsibility to register and report.

To improve its billing and collection operations, the department should do the following:

- *Attempt to collect, where appropriate, hazardous waste generation fees from generators whose fees were limited to \$15,000 but that did not qualify for the fee limitation. In addition, consider administrative remedies in those cases where collection is not appropriate.*

Partially Resolved—

Previously, state rules provided that generators' fees could be limited to \$15,000 if they submitted a signed certification stating they complied with administrative rules. Our 1996 report noted that the department inappropriately limited fees for three generators by approximately \$1.6 million. One of these generators was not billed for fees totaling \$1.5 million. Department management said that they reviewed the cases in which the fee limitation was used, but the certification was not filed. They decided that, given the information available at the time and the burden of proof they would have had to satisfy, it would not have been worth expending the resources necessary to pursue the matter. The fee limitation has since been eliminated.

Additional Action

Recommended—Given the significant amount of fees owed, we question the sufficiency of the department's collection efforts and recommend that department management consult with the Attorney General's office as to whether the fees are collectable.

- *Follow up on registered large and small generators that fail to submit an annual waste generation report to determine if the generators are operating, and to ensure that state fees are paid*

where appropriate. To do so, follow the recommendations in Chapter I of this report and monitor in-state and out-of-state shipments of hazardous waste.

Partially Resolved—While the department does have procedures for following up on generators that fail to submit annual waste generation reports or pay fees, out-of-state shipments are not monitored. In addition, as noted above, the department has not completely resolved all of the recommendations included in Chapter I of the report.

Additional Action

Recommended—The department should take advantage of available information resources that would assist it in identifying unregistered generators and generators that fail to submit accurate annual reports.

To ensure that penalties imposed on violators of hazardous waste laws and rules are effective in deterring further violations, the department should do the following:

- *Consistently impose civil penalties in amounts that reflect the class and magnitude of the violation, and that account for all factors discovered that must be considered under the state's penalty formula.*

Partially Resolved—

Department management said that penalties are reviewed to ensure that they are consistent across programs and violation types. While some question remains as to whether the size of the penalties is sufficient to deter noncompliance, department managers reported that the department has received a \$150,000 grant that it is using to study the issue of what level of penalty constitutes an effective deterrent.

Objective, Scope and Methodology

We conducted this audit in compliance with *Oregon Revised Statute 297.210*, which requires the Secretary of State to perform an audit or review when the executive head of a state department leaves that position for any reason. Our audit objective was to assure that the department took appropriate actions to protect state assets upon the former director's separation. Specifically we:

- Determined whether state assets in the custody and control of the former director were returned to the department upon his resignation.
- Determined whether the former director's access to department and any state automated systems was terminated upon his resignation.
- Reviewed the former director's travel claims approved during his final six months of service to determine whether they complied with state travel rules and whether they were authorized, proper, adequately supported, and reasonable. Our review included three travel claims that were approved after the former director left office.
- Reviewed payroll disbursements to the former director, as well as his leave accrual records, to determine if there were any unusual payments or leave accrual rate changes during his final six months of service. We also determined whether the former director was properly removed from the department payroll.
- Reviewed payroll disbursements and leave accrual records for those employees whose timesheets the former director approved to determine if there were any unusual payments or leave accrual rate changes during the six months prior to former director's departure.

- Reviewed personal services contracts signed by either the former director or former deputy director during the former director's final 12 months of service to determine if they were reasonable, proper, and adequately supported. We also determined whether payments made under these contracts were

appropriate and whether deliverables were received.

- Determined whether the former director was subject to any internal or external investigation or disciplinary action pertaining to legal compliance.

- Reviewed the department's efforts to resolve our prior audit recommendations.

We conducted this audit according to generally accepted government auditing standards. We limited our review to the areas specified above.

This report, which is a public record, is intended to promote the best possible management of public resources. Copies may be obtained by mail at Oregon Audits Division, Public Service Building, Salem, Oregon 97310, by phone at 503-986-2255 and 800-336-8218 (hotline), or internet at Audits.Hotline@state.or.us and <http://www.sos.state.or.us/audits/audithp.htm>.

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The courtesies and cooperation extended by the officials and staff of the Department of Environmental Quality were commendable and much appreciated.

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