



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

FILE ID NUMBER: 2009178

AGENCY: Ohio Environmental Protection Agency

BASIS FOR INVESTIGATION: OIG Initiative

ALLEGATION: Failure to Exercise Adequate Oversight of Agency Functions and Activities

INITIATED: May 28, 2009

DATE OF REPORT: September 4, 2009

EXECUTIVE SUMMARY

File ID No. 2009178

In May 2009, the Ohio Inspector General's Office ("OIG") became aware of several news articles concerning the Ohio Environmental Protection Agency's ("Ohio EPA") alleged decision to award \$2.2 million to Absorbent Materials Company, LLC ("Absorbent Materials") so it could clean up high levels of trichloroethylene at the Reactive Metals Incorporated ("RMI") extrusion plant facility ("the RMI site") near Ashtabula, Ohio. These articles further stated the U.S. Department of Energy informed the Ohio EPA that the RMI site had been cleaned up more than two years earlier. Several of the articles quoted an unidentified Ohio EPA official who stated that the agency had relied upon an old and inaccurate geological data report attached to Absorbent Materials' application for funding, and that Ohio EPA's failure to investigate the accuracy of the information submitted by Absorbent Materials was the result of the agency's desire to quickly allocate federal stimulus money for water and sewer projects in Ohio.

Based upon our investigation, we find that no wrongful act or omission occurred in this instance. Contrary to media reports, at no point did Ohio EPA conclusively determine that it was going to award funds to Absorbent Materials for completion of the RMI site project; the proposed project was merely placed on a draft Project Priority List for review and comment by the U.S. EPA and the public. During the review and comment period, several individuals—including an employee from Ohio EPA's Northeast District Office, state representatives, U.S. Department of Energy officials, and newspaper reporters— notified Ohio EPA that the proposed RMI site clean-up had been completed in 2006. Once Ohio EPA received and verified this information, it announced that the RMI site clean-up project would not be funded and removed it from the Project Priority List. As a result, there was no waste or improper use of state or federal funds. Nevertheless, we have made two recommendations on how Ohio EPA can improve its process for reviewing Ohio Water Pollution Control Loan Fund nomination forms.

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I. BASIS FOR INVESTIGATION

In May 2009, the OIG became aware of several news articles concerning the Ohio EPA's alleged decision to award \$2.2 million (\$1.1 million of which would be federal stimulus money) to Absorbent Materials so it could clean up high levels of trichloroethylene at the RMI site, a former weapons plant near Ashtabula, Ohio. These articles stated that the U.S. Department of Energy informed the Ohio EPA that the RMI site had been cleaned up more than two years earlier. Several of the articles quoted an unidentified Ohio EPA official, who stated that the agency relied upon an old and inaccurate geological data report attached to Absorbent Materials' application for funding when the decision to award the money was made. The Ohio EPA official further indicated that the failure to verify Absorbent Materials' information was attributable to the agency's desire to quickly allocate federal stimulus money for water and sewer projects in Ohio. Based upon these articles, the OIG opened up an investigation on May 28, 2009.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We conducted interviews and examined records regarding the Ohio EPA's evaluation of Absorbent Materials' proposed project. In addition, we reviewed communications between the Ohio EPA and the U.S. Department of Energy regarding the proposed project.

III. DISCUSSION

Background

The Ohio EPA is the state agency responsible for protecting the environment and public health by enforcing air, water, waste management, and hazardous substance contamination laws and regulations. One of Ohio EPA's programs, the Water Pollution Control Loan Fund program, provides low-interest loans and technical assistance to public and private entities for water quality improvement projects such as the construction of wastewater treatment plants and storm sewers, hazardous waste clean-up, and landfill closure. The Water Pollution Control Loan Fund program is administered by the Environmental Planning section of the Ohio EPA's Division of

Environmental and Financial Assistance. James L. Bonk is one of the supervisors in the Environmental Planning section.

The Ohio EPA, and its Division of Environmental and Financial Assistance in particular, has a specific procedure for the review and selection of applicants seeking water pollution control loans. (See Exhibit A). In April 2009, the Ohio EPA received approximately \$220.6 million in American Recovery and Reinvestment Act (“ARRA”) funds to be awarded as subsidies that would reduce the principal amount of water pollution control loans. ARRA, which was signed into law on February 17, 2009, provides funds to state and local governments to restore economic growth, create jobs, and modernize infrastructure. State and local governments that are entrusted with ARRA funds must not only utilize or disburse the monies promptly, but must do so in an efficient, effective, and lawful manner. Accordingly, they must ensure that: a) ARRA funds are awarded and distributed fairly, reasonably, and in accordance with any restrictions imposed by ARRA; b) funds are used for authorized purposes; c) fraud, waste, and abuse are avoided and unnecessary delays and cost overruns are kept to an absolute minimum; and d) the broader goals of creating jobs and restoring economic growth are achieved.

Allegation: The Ohio EPA failed to exercise proper oversight by deciding to award Absorbent Materials \$2.2 Million to perform a site clean-up that was completed in 2006.

In mid-March 2009, Ohio EPA sent out an e-mail notice to interested entities stating that it was seeking nominations for water pollution control projects that would be partly funded through ARRA. The notice gave applicants seven days to submit nomination forms to the Ohio EPA. Absorbent Materials, a Wooster, Ohio, company that develops reactive glass products for the clean-up of toxic and volatile materials, learned about the availability of the water pollution loans. Absorbent Materials spent two days preparing a total of three nomination forms. One of the nomination forms proposed the remediation (or clean up) of high levels of trichloroethylene¹

¹Trichloroethylene, or “TCE,” is a nonflammable, colorless, chlorinated solvent that is primarily used to remove grease from metal. TCE (which is also used in paint and spot removers, adhesives, and typewriter correction fluids) is frequently found in underground and surface waters. Drinking small amounts of TCE for extended periods of time may cause liver and kidney damage and impairment of the immune system, and birth defects. In addition, some scientific studies indicate that high levels of TCE can cause liver, kidney, and lung cancer. See “ToxFAQs” for

at the RMI site near Ashtabula, Ohio. (See Exhibit B).² No one from Absorbent Materials ever visited the RMI site or spoke to anyone at RMI regarding the proposed clean-up project. According to Absorbent Materials, it obtained the data on its RMI site nomination form from the Army Corp of Engineers website as well as other internet sources.³ Absorbent Materials' three nomination forms were submitted directly to the Ohio EPA.

Ohio EPA received 1,091 Water Pollution Control Loan nomination forms, including the three submitted by Absorbent Materials. A team of approximately ten employees from the Environmental Planning section reviewed the nominations during a three week period. The team took the statements set forth in each nomination form at face value; no attempt was made to verify the information in any of the nomination forms. The team then scored and ranked the nominations. Absorbent Materials' RMI site proposal was ranked 228th out of 1,091 projects.

In April 2009, Ohio EPA created a draft Project Priority List ("PPL"). The draft PPL was included in an Intended Use Plan, and the entire packet was submitted to the U.S. EPA's Region Five Office for review and comment. According to the Ohio EPA, it did not have sufficient time to "cross-check" the projects on the draft PPL because it had to disseminate the loan funds quickly in order to achieve the ultimate goals of ARRA, *i.e.*, creating jobs and restoring economic growth. On April 23, 2009, Ohio EPA posted the draft PPL/Intended Use Plan on its website. In order to expedite the process, Ohio EPA reduced the usual 30 day posting period to 14 days.

On or about April 27, 2009, Ermelindo Gomes, an Environmental Engineer in the Ohio EPA's Northeast District Office (Twinsburg, Ohio) noticed Absorbent Materials' RMI site project on the draft PPL. Gomes, who was aware that the RMI site clean-up was already completed

Trichloroethylene, U.S. Department of Health and Human Services' Agency for Toxic Substance and Disease Registry, <http://www.atsdr.cdc.gov/tfacts19.html>.

²Absorbent Materials' other nomination forms proposed the water quality monitoring of the Black River and the clean-up of chlorinated solvent groundwater at TCR Steel.

³ Interestingly enough, a 2008 report entitled "Cleaning Up America's Nuclear Weapons Complex" posted on the NGA Center for Best Practices website utilized by Absorbent Materials contained the following words regarding the RMI site: "DOE completed remediation and declared closure of the site in 2006, releasing it to the private owner under industrial use restrictions." (See Exhibit C).

because the Northeast District Office had assumed primary oversight over the 2006 remediation, notified the Division of Environmental and Financial Assistance. Subsequent e-mail communications between various Ohio EPA employees on April 27 and 28, 2009, reiterated the fact that the RMI site had already been cleaned up. (See Exhibit D). Around the same time, the Ohio EPA began receiving telephone calls from state representatives indicating that the RMI work was completed several years earlier. Nevertheless, because there was uncertainty within Ohio EPA regarding whether there were *additional* environmental issues at the RMI site, the agency decided not to remove the RMI site project from the draft PPL at that juncture, and to wait for the conclusion of the public comment period.

In May 2009, Susan L. Smiley, a Project Manager in the U.S. Department of Energy's Project Management, Planning, and Controls Division, obtained a copy of a May 2, 2009, *Ashtabula Star Beacon* article regarding the RMI project. The May 2, 2009, article stated that the RMI site was certified as being clean in January 2007 and subsequently sold to Cochran Properties. Smiley was aware the site had been cleaned up on November 1, 2006, because she had been involved in the remediation and had actually prepared the U.S. Department of Energy documentation confirming the project's completion. Concerned that perhaps there was a *new* contamination at the site, Smiley contacted the Ohio EPA. In e-mails to James Bonk between May 4 and 6, 2009, Smiley provided the May 2, 2009, *Ashtabula Star Beacon* article and Ohio Department of Health and Ohio EPA letters indicating that the RMI site was cleaned up and approved for unrestricted use. (See Exhibit E). Subsequent communications between the U.S. Department of Energy and the Ohio EPA confirmed that Absorbent Materials did not own the RMI site, the site was remediated in 2006, and there were no subsequent environmental issues.

After considering all of the information it received, Ohio EPA decided not to fund Absorbent Materials' proposed RMI site clean-up. On June 4, 2009, Ohio EPA posted a summary of responses stating that the RMI site project would not be funded. (See Exhibit F). On June 5, 2009, a revised PPL that did not include the RMI site project was posted on Ohio EPA's website.

Based upon our investigation, we find that no wrongful act or omission occurred in this instance. Contrary to media reports, at no point did Ohio EPA conclusively determine that it was going to award funds to Absorbent Materials for completion of the RMI site project; the proposed project was merely placed on a draft PPL for review and comment by the U.S. EPA and the public. During the review and comment period, several individuals—including an employee from Ohio EPA’s Northeast District Office, state representatives, U.S. Department of Energy officials, and newspaper reporters—notified Ohio EPA that the proposed RMI site clean-up had been completed in 2006. Once Ohio EPA received and verified this information, it announced that the RMI site clean-up project would not be funded and removed it from the Project Priority List. As a result, there was no waste or improper use of state or federal funds.

Accordingly, we find that no wrongful act or omission occurred in this instance.

IV. CONCLUSION

Once Ohio EPA learned that the proposed RMI site clean-up was already completed, the project was removed from the Project Priority List and no funds were expended. We note that Ohio EPA could have learned that the proposed project was completed in 2006 had it simply checked with the Northeast District Office instead of relying upon public comment and information from the media and other sources. The OIG has two recommendations for improving Ohio EPA’s review process.

V. RECOMMENDATIONS

Based upon the results of this investigation, we make the following recommendations and ask that the Ohio EPA respond to this Office within the next sixty (60) days with a plan stating how these recommendations will be implemented:

1. When appropriate, Ohio EPA should require Water Pollution Control Loan Fund applicants to submit proof of ownership or authorization from the site owner along with their nomination forms.

2. Ohio EPA should implement a system of verifying the information contained on Water Pollution Control Loan Fund nomination forms before scoring and ranking projects and placing them on the draft Project Priority List.