

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF NATURAL RESOURCES
FILE ID NO.: 2015-CA00032
DATE OF REPORT: OCTOBER 20, 2016

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Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2015-CA00032

SUBJECT NAME: Division of Oil and Gas Resources Management

POSITION: State Agency Department

AGENCY: Ohio Department of Natural Resources

BASIS FOR INVESTIGATION: Agency Referral

ALLEGATIONS: Failure to Comply with State Law and/or Regulations

INITIATED: June 24, 2015

DATE OF REPORT: October 20, 2016

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On June 18, 2015, the Office of the Ohio Inspector General received a memo from the Ohio Office of Budget and Management (OBM) alleging suspected illegal or improper activity by state employees at the Ohio Department of Natural Resources (ODNR) Division of Oil and Gas Resources Management (DOGRM). This memo was sent in accordance with an Office of Ohio Governor's directive issued April 7, 2011. The memo stated that during an audit conducted by the OBM Office of Internal Audit (OIA), ODNR was informed of potential overpayments made by well owners. A subsequent review by the internal auditors of audit logs for the DOGRM Risk Based Data Management System found the records had been changed by DOGRM staff members to reflect that no overpayments had been made by permit holders. An investigation was opened on June 24, 2015.

BACKGROUND

Office of Internal Audit¹

The Office of Internal Audit (OIA), a division within the Ohio Office of Budget and Management, was created by the 127th General Assembly in Substitute House Bill No. 166, effective February 14, 2008. The duties and responsibilities of the OIA are outlined in Ohio Revised Code §126.45 through 126.48. The OIA chief internal auditor is appointed by the director of OBM, with the approval of the governor, and serves at the pleasure of the director. A five-member state audit committee was also created with the same effective date as the OIA. One member of the audit committee is appointed by the governor and serves as the committee chairperson. Two members are appointed by the speaker of the Ohio House of Representatives, one of which may be recommended by the minority leader, and two members are appointed by the president of the Ohio Senate, one of which may be recommended by the minority leader. All members serve three-year terms and no more than two members of those appointed by the speaker and president may be of the same political party.

The OIA is required to create an annual audit plan that identifies the state agencies to be audited in a fiscal year and presents the audit plan to an independent state audit committee that OIA

¹ Source: Ohio Revised Code §126.45 through §126.48.

reports to, for their review and comment.² When determining which agency will be audited in a fiscal year, the audit plan considers the risk of fraud, waste, or abuse of public money within an agency; the length of time since the last internal audit of the agency; the size of the agency and the amount of time and resources necessary to audit it; and any other relevant factors. At the conclusion of each internal audit, a preliminary report of the audit's findings and recommendations is to be presented to the agency director and the state audit committee. The agency director has the opportunity to respond within 30 days with a corrective action plan for any findings or recommendations not in dispute. A final report is then issued within 30 days after the time period to receive the agency's response has expired, and when there are no disputes between the OIA and the agency regarding the findings.

Ohio Department of Natural Resources

The Ohio Department of Natural Resources (ODNR) is responsible for the state's wildlife, forests, natural areas, state parks, geological and mineral resources, inland lakes and waterways, regulation of the issuance of hunting and fishing licenses, watercraft registrations, the Lake Erie coastline, and enforces state law in regard to natural resources and conservation. ODNR has 10 operating divisions to carry out these functions, as well as central administrative offices that oversee the department's day-to-day operations. The director of ODNR, who serves as the agency's chief executive officer, is appointed by the governor and confirmed by the Ohio Senate. Funding for ODNR is provided through general revenue funds, federal funds, and licenses and fees for those they regulate.³

The Division of Oil and Gas Resources Management (DOGRM), within ODNR, has "... sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and producing operations with the state, excepting only those activities regulated under federal laws for which oversight has been delegated to the environmental protection agency ...". All monies collected by DOGRM are deposited into the state treasury to an oil and gas well fund used to carry out the functions of the division.⁴

² The state of Ohio operates on a fiscal year basis beginning on July 1st and ending June 30th.

³ Source: Ohio biennial budget documents and ODNR website.

⁴ Source: Ohio Revised Code §1509.02, Division of oil and gas resources management – chief – oil and gas well fund.

Applicable Laws, Rules and Regulations

Ohio Revised Code §1509.06, Application for permit to drill, reopen, convert, or plug back a well, outlines the permitting process for certain oil and gas wells. It describes the information that shall be on the application form developed by DOGRM and the types of information to be submitted for review depending on the type of well the applicant is applying for. Also outlined in this section of the Ohio Revised Code are the responsibilities of DOGRM when issuing permits. Those responsibilities reviewed as part of the investigation include:

- Permits are to be issued within 10 days of the filing of an application unless the chief waives the time period or a request for an expedited review is filed. However, the chief shall issue a permit within 21 days unless the application is denied.
- If a proposed well is within an urbanized area, the time period to issue a permit is between 18 and 30 days.
- An applicant can request an expedited review of the application. The request shall be accompanied by a “nonrefundable” rush fee of \$250 or \$500, depending on the type of permit issued. The chief has seven days to issue a permit unless the application is denied.
- Fees accompanying an application depend on the type of permit issued, and range between \$250 and \$1,000. The Ohio Revised Code states the fee is “nonrefundable.”

INVESTIGATIVE SUMMARY

On July 8, 2015, the Office of the Ohio Inspector General met with officials from the OBM Office of Internal Audit and members of the audit team to discuss the internal audit conducted on the ODNR Division of Oil and Gas Resources Management. The OIA explained they had met with officials at DOGRM as part of the close-out of the audit and discussed potential overpayments made by well owners they noted as part of their audit testing in May 2015. DOGRM asked for the examples and requested time to research the issues noted. In June 2015, the two groups met again and the OIA stated DOGRM provided documentation that was different than what was initially provided as part of the audit testing. After the meeting, the OIA asked a staff-member who was not present at the meeting about the differences. The individual explained that the OIA was provided an audit log showing changes that were made to the Risk Based Data Management System (RBDMS) which is used to track well permits. The OIA noted

several changes were made to RBDMS to make it appear the applicants in question no longer had overpayments on their accounts. These changes were made after the meeting in May 2015 but before the June 2015 meeting between DOGRM and OIA.

The OIA stated DOGRM initially denied any overpayments existed, as the Ohio Revised Code states fees paid are “nonrefundable.” However, the OIA believed if an applicant overpaid based on differences between the application and permit issued, then the overage should be refunded. The OIA also believed if an oil and gas well applicant requested an expedited review and the permit was not issued within the seven-day time period as outlined in the Ohio Revised Code, the fee should be refunded if the applicant was not at fault (i.e., the applicant did not submit the required documentation or there was a problem with the documentation provided). DOGRM believed that “nonrefundable” meant just that and no portion of the fee should be returned regardless of the circumstances. The OIA told the Office of the Ohio Inspector General that its auditors questioned why DOGRM felt it was necessary to make the changes in RBDMS reflecting that no overpayments occurred if DOGRM felt overpayments didn’t exist, regardless of the circumstances.

The Office of the Ohio Inspector General asked if there were other areas of concern the OIA had with the DOGRM permitting process. The OIA determined there were concerns with the revenue collection process, stating one person was responsible for collecting the fees, processing the applications, and depositing the monies with the Ohio Treasurer of State. These issues were to be addressed within the OIA audit report. There were also concerns with the length of time it took DOGRM to issue permits, especially with those where the applicant asked for an expedited review.

On July 9, 2015, the Office of the Ohio Inspector General requested copies from DOGRM of the revenue receipts submitted to the Ohio Treasurer of State and all supporting documentation; copies of the applications and corresponding fee payments; permit information corresponding to the applications; and audit logs for RBDMS from January 2014 to June 2015. On August 17, 2015, DOGRM provided scanned copies of the revenue receipts and supporting documentation, including fee payments; scanned copies of the permits issued that included the application with

supporting documents, as well as DOGRM-prepared forms and documents related to the permit; and a Microsoft Access® database which appeared to be a copy of RBDMS.

Investigators noted when reviewing the revenue receipts, a DOGRM-created document was included entitled “Revenue Receipt (sic)/Fee Summary Report.” This report listed the payments received on a daily basis, a breakdown of the payments into fee amounts and rush fee amounts, the names of the applicants and corresponding application numbers, and application type. The application type was a two- to four-letter code that identified the type of well for which the applicant was requesting a permit. Within the copy of the RBDMS database, a list of the codes with their descriptions and the corresponding fee amounts were identified by investigators.

An in-depth analysis was conducted by the Office of the Ohio Inspector General comparing the information on the revenue receipts to the corresponding applications and permits. The analysis identified several areas of concern that were grouped into categories by investigators:

- Copies of fee payments where no corresponding scanned application or permit was identified and the payment was not listed in the RBDMS database;
- Permits issued for well types different than what was requested on the application;
- Overpayments by applicants either paying an incorrect amount or based on a permit issued for a well type different than what was requested on the application;
- Underpayments by applicants either paying an incorrect amount or based on a permit issued for a well type different than what was requested on the application;
- Permits issued outside of the 21- to 30-day limit, depending on the well location, as allowed for in the Ohio Revised Code; and
- Permits issued for requested expedited reviews outside of the seven-day limit as allowed for in the Ohio Revised Code.

On January 26, 2016, the Office of the Ohio Inspector General sent a list to DOGRM of individual permit or fee payments where potential issues were identified, and investigators included a list of questions with a request that DOGRM respond. After a second request was sent on April 4, 2016, administrators at ODNR indicated a response would be forthcoming by no later than April 15, 2016. On June 3, 2016, a response was received and is outlined below.

Payments Received - No Scanned Documents Identified/Not Located in Database

The Office of the Ohio Inspector General identified 77 payments that were listed on the daily revenue receipt summaries, but no scanned permit documents were located and the payments were not listed in the RBDMS database. Investigators asked DOGRM what the payments were for, and if they were for well permits, to provide copies of the permits.

DOGRM responded that eight permits were for permit types not tracked through RBDMS. For the remaining 69, the division stated they were unsure why the payments would not be in the database "... as (the) process needs application numbers assigned to the checks in order to deposit them with the fiscal section of the division."

Permit Well Type Different than Application Well Type

The Office of the Ohio Inspector General identified 125 permits where the well type was different than what was listed on the application. ([Exhibit 1](#)) For example, the application would indicate "... drill new well, horizontally" in the "Type of Well" section but the permit was issued for "... plug back to horizontally drill." Investigators asked DOGRM who made the decisions on issuing a permit that differs from the permit requested on the application; does someone approve or review this decision; and how and when is the applicant notified that a permit is going to be issued that is different than the application.

DOGRM responded the permitting manager made the decision whether a permit would be issued that was different than what was noted on the application. This decision was then communicated to the rest of the staff either verbally or through a memo or email. DOGRM also stated applicants were not notified of the change unless they paid an incorrect fee.

During the review of the permit and application file, investigators did not find documentation of written communications regarding the issuing of permits that were different from what was requested on the initial application. Investigators did note that on several occasions where applications were completed electronically or typed, there were handwritten changes to the form. For example, the check boxes under well type would have a handwritten notation in the box indicating the type of well permit ultimately issued to the applicant. The majority of the time,

these handwritten notations did not have initials or other notes to indicate who was making or approving the change.

The Office of the Ohio Inspector General requested an example of the memo or email prepared by DOGRM staff members regarding changes to the well type. ODNR provided a copy of a “Correction/Change of Existing Permits.” Investigators identified copies of these in the scanned documents provided by ODNR. However, investigators discovered the “Correction/Change of Existing Permits” were not included in the files that contained the permit and original application documents. Therefore, investigators were unable to conduct an analysis on how these “Correction/Change of Existing Permits” were actually used because they could not be correlated to the original permit and application files.

Potential Overpayments

The Office of the Ohio Inspector General identified 47 permits where the applicant potentially overpaid the fee for the well type issued. Of those, five were the result of the applicant paying the incorrect fee; 29 were the result of the permit being issued with a different well type than what was indicated on the application; and 13 were for a revised permit issued at a later date. The total amount of potential overpayments identified equaled \$13,150. ([Exhibit 2](#))

Investigators asked DOGRM whether overpayments were either returned or credits issued; if credits were issued, how these credits were tracked; and whether applicants were notified that a credit had been applied to their account. Investigators also asked who was responsible for deciding whether a refund or a credit was to be issued.

DOGRM responded that their policy required checks to be deposited within two days of receipt and if an overpayment was identified within that time frame, the applicant was notified. Refunds were issued if requested by the applicant. DOGRM did not keep track of credits owed due to potential overpayments.

It should be noted DOGRM previously stated if a permit was issued for a different well type than what was indicated on the application, they would notify the applicant if an incorrect fee was

paid. However, DOGRM later stated they notified the applicant of a potential overpayment during the two-day period before the payment of the fee was processed.

Because payments are processed by DOGRM within two days of receipt of the applicant's check and before the application is reviewed to determine if the appropriate well type has been requested by the applicant, there is no opportunity to notify the applicant of a potential overpayment before the payment is processed. When reviewing the scanned documents, investigators identified only two instances where a notation was made that an incorrect fee had been paid. No documentation was found to suggest applicants were ever notified of potential overpayments.

A review of state accounting records by the Office of the Ohio Inspector General during the same time period under review found only one instance where a refund was requested and issued by DOGRM.

Potential Underpayments

The Office of the Ohio Inspector General identified 31 permits where the applicant potentially underpaid the fee for the well type issued. Of those, 15 were the result of the applicant paying an incorrect fee or rush amount; and 16 were the result of the permit being issued with a different well type than what was indicated on the application. The total amount of potential underpayments identified equaled \$9,750. [\(Exhibit 3\)](#) Investigators asked if the applicant was notified that they did not pay the correct fee. DOGRM responded the applicant was usually notified the day the application was received. A review of the documentation related to these permits found no evidence the applicant was notified they owed additional fees to DOGRM.

In cases where payments were received but no scanned documents were identified nor were the payments listed in the database, as discussed previously, these payments were issued a new application number. When reviewing the revenue receipts, investigators found several instances where a payment was received, and the daily log reflected the payment was related to fees owed on a previously issued permit. The original application number was included with the payment.

Therefore, investigators assumed that since a new application number was issued, these payments were not related to fees owed by those who underpaid.

Change to Amounts Collected in RBDMS

While reviewing changes made in RBDMS, investigators identified 35 instances where the payment amount was changed related to potential overpayments; seven instances where changes were made related to potential underpayments; and three instances where changes were made and investigators were unable to determine if the applicant underpaid or overpaid. ([Exhibits 2, 3, and 4](#)) In some cases, the fee and rush amounts were switched, resulting in the higher rush fee being erroneously paid instead of the lower fee amount, resulting in an overpayment.

DOGGRM was asked why the changes were made, and officials responded, "... the drilling activity does not match the permits that were issued. The inspector notified (the) permitting section of the activity and the permitting section corrected the permit to reflect the actual activity." The Office of the Ohio Inspector General asked for clarification of this response as it did not address why changes were made to the payments. ODNR provided the same response to the original question.

The Office of the Ohio Inspector General also reviewed any changes made by DOGGRM staff-members in the RBDMS database provided to investigators. From this review of the database, investigators found changes to what was indicated as well type were made months before any changes to the fees paid. Because DOGGRM told investigators that credits owed to applicants were not tracked, and as investigators found only one refund was issued during the time period under review, investigators found no apparent reason as to why these changes were made to the database.

Length of Time to Issue Permits

Using the copy of the RBDMS database, the Office of the Ohio Inspector General calculated the number of days it took to issue a permit using the date the application was received and the date the permit was issued. According to the Ohio Revised Code, DOGGRM has between 10 and 21 days to issue a permit for a well located in a non-urbanized area; between 18 and 30 days for

wells located in an urbanized area; and for those requesting an expedited review, permits were to be issued within seven days.⁵ The calculations showed:

- Non-urbanized area, no expedited review: 270 of the 1,658 permits reviewed were issued outside of the 21-day maximum limit;
- Urbanized area, no expedited review: 32 of the 133 permits reviewed were issued outside of the 30-day maximum limit; and
- Expedited review: 720 of the 1,099 permits reviewed were issued outside the seven-day limit.

DOGRM was asked to explain why permits were issued outside of the allowable time frames, and officials responded by explaining permits were issued beyond the allowable timeframe because the applications were incomplete or incorrect.

The Office of the Ohio Inspector General selected a sample of permits issued 14 days or later where an expedited review was requested and the fee paid by the applicant. Forty percent of the sample selected found no indication in the documentation that the application was either incomplete or incorrect. Additionally, all of the documentation appeared to be date stamped with the same date as the application. In one instance, investigators found where an applicant had submitted two applications on the same date, paying with same check, for wells located within close proximity of each other. One application was processed within the seven-day time frame while the other was processed 62 days later.

Investigators asked DOGRM to further explain why these permits were processed outside of the allowable timeframe, when the documentation indicated that everything required for the application to be approved and the permit to be issued appeared to have been received at the same time as the application. ODNR officials stated that in the one instance noted by investigators, one piece of documentation was received months later and therefore the application was not processed until the documentation was received. Officials also stated that they had informed DOGRM staff members to indicate on the ODNR-prepared documents when

⁵ As the Ohio Revised Code did not indicate business days, the calculations were based on calendar days.

missing documentation or an incorrect application was received and to note when the items were received or corrected.

CONCLUSION

The Office of the Ohio Inspector General conducted an extensive review of the processing of oil and gas well permits by the Ohio Department of Natural Resources Division of Oil and Gas Resources Management (DOGRM). This review was conducted based on concerns expressed by the Office of Budget and Management Office of Internal Audit after their internal audit of DOGRM.

Overall, the Office of the Ohio Inspector General found:

- Changes to applications by DOGRM without notifying the applicant;
- Applicants not being notified of potential overpayments or underpayments;
- Changes made to payments from permit holders in the Risk Based Data Management System (RBDMS) with no explanation provided by DOGRM; and
- Applications not being processed within the timeframe outlined in the Ohio Revised Code.

Officials at ODNR stated the reason applications were not processed within the timeframe, especially those where an expedited review was requested, was due to incomplete or incorrect information provided by the applicants. This appears to be an ongoing issue, as more than 65 percent of the permits reviewed were processed outside of the seven-day time period allowed. The average length of time DOGRM takes to process an expedited request is 15 days.

A review of the applicants found the majority were from companies, sometimes large publically traded corporations, rather than individuals. And yet, these companies who have hundreds, if not thousands, of permits appear to be consistently making the same errors each time a new application is submitted.

Throughout this review, the Office of the Ohio Inspector General found a lack of communication by DOGRM to permit holders and applicants who consistently made the same errors. DOGRM

stated they do not notify applicants when a permit is issued for a different well type other than what was noted on the application. Nor does DOGRM appear to notify applicants when a potential overpayment or underpayment has occurred.

As there was no notation on the documentation in the sample of permits reviewed, the Office of the Ohio Inspector General is unable to conclusively determine if the applications were incomplete or inaccurate, or if DOGRM violated the timeframes outlined in the Ohio Revised Code.

Accordingly, the Office of the Ohio Inspector General finds no reasonable cause to believe a wrongful act or omission occurred in these instances.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Department of Natural Resources to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Department of Natural Resources should:

- 1) Further review the payments that were not listed in the RBDMS database and ensure permits were issued.
- 2) Notify applicants in writing the reason why a permit is being issued for a well type different than what was originally applied for.
- 3) Review the potential overpayments and determine if the applicants are owed refunds.
- 4) Create a system to track credits owed to permit holders. This should include the creation of a credit memo that is issued to the permit holder giving them the option to return the credit memo for a refund or include the credit with their next application fee.
- 5) Review the potential underpayments and determine if the applicant owes DOGRM additional fees.
- 6) Communicate with permit holders regarding consistent issues they may be having regarding missing or incomplete documentation to ensure permits are being processed within the Ohio Revised Code required timeframes.

REFERRALS

This report of investigation will be provided to the Ohio Auditor of State and the Office of Budget and Management Office of Internal Audit for consideration.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Natural Resources

FILE ID #: 2015-CA00032

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
October 20, 2016

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