



STATE OF NORTH CAROLINA

DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

STANDARDS DIVISION

LIQUEFIED PETROLEUM GAS SECTION

FINANCIAL RELATED AUDIT

VIOLATION ENFORCEMENT INVESTIGATION FOLLOW-UP

OCTOBER 2013

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

STATE AUDITOR

EXECUTIVE SUMMARY

PURPOSE

This audit evaluates whether the Department of Agriculture & Consumer Services took appropriate corrective action to address recommendations made in the *Liquefied Petroleum (LP) Gas* investigative report issued in December 2011.

BACKGROUND

Department of Agriculture & Consumer Services - Standards Division's mission is to ensure safety and quality in the market places of North Carolina for all consumers, manufacturers, and merchants. To accomplish its mission, the Liquefied Petroleum Gas Section (LP-Gas Section) performs safety inspections of LP-gas installations and transportation vehicles.

The LP-Gas Section's response to the *LP Gas* investigative report included the following planned corrective actions: 1) discuss, with General Assembly, changing the law to reference a penalty policy for LP-gas violations; 2) establish and monitor milestones for the development of its violation tracking database; and 3) formalize a process for passing along LP-gas truck violations under federal jurisdiction to the appropriate agency.

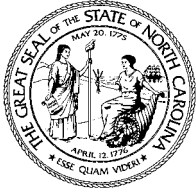
KEY FINDINGS

- The LP-Gas Section implemented its corrective action plans.
- The performance of the violation tracking system can be further improved.
- The LP-Gas Section does not monitor routine and follow-up inspections to ensure timely completion.
- Penalties are routinely reduced by 50% without consideration of violation severity and violator's overall safety performance.

KEY RECOMMENDATIONS

- The LP-Gas Section should assess the violation tracking system to make sure it works as intended.
- The LP-Gas Section should monitor routine and follow-up inspections for timely completion to ensure public safety.
- LP-gas penalty reduction should be calculated based on clearly defined criteria.

The key findings and recommendations in this summary are not inclusive of all the findings and recommendations in the report.



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AUDITOR'S TRANSMITTAL

October 31, 2013

The Honorable Pat McCrory, Governor
The General Assembly of North Carolina
The Honorable Steve Troxler, Commissioner, Department of Agriculture & Consumer Services

This report presents the results of our financial related audit at the North Carolina Department of Agriculture & Consumer Services. Our work was performed by authority of Article 5A of Chapter 147 of the *North Carolina General Statutes* and was conducted in accordance with the performance audit standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The results of our audit disclosed deficiencies in internal control and/or instances of noncompliance or other matters that are considered reportable under *Government Auditing Standards*. These items are described in the *Audit Findings, Recommendations, and Responses* section of this report.

North Carolina General Statutes require the State Auditor to make audit reports available to the public. Copies of audit reports issued by the Office of the State Auditor may be obtained through one of the options listed in the back of this report.

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor

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BACKGROUND

As authorized by Article 5A of Chapter 147 of the *North Carolina General Statutes*, we have conducted a financial related audit at the Department of Agriculture & Consumer Services' Standards Division – Liquefied Petroleum Gas Section (LP-Gas Section).

The Standards Division's mission is to ensure safety and quality in the market places of North Carolina for all consumers, manufacturers, and merchants. To accomplish its mission, the LP-Gas Section performs safety inspections of LP-gas installations and transportation vehicles. The LP-Gas Section reported as of mid-August 2013, that there are 3,025 LP-gas licensees in North Carolina subject to inspections.

This audit evaluates whether the LP-Gas Section took appropriate corrective action to adequately address recommendations made in the *Liquefied Petroleum (LP) Gas* investigative report issued in December 2011. The investigation found for the period October 2009 through September 2010 that the LP-Gas Section only issued \$7,100 in fines although the inspectors identified 7,466 violations of LP-gas regulations against 1,189 facilities.¹

Along with other state agencies, the civil penalties assessed and collected by the LP-Gas Section for violations of Liquefied Petroleum Gases laws are required to be deposited into the Civil Penalty and Forfeiture Fund. Under *General Statute* 115C-457.3, the General Assembly appropriates moneys from this fund to local school systems.

The LP-Gas investigative report stated that certain violations present threats to public health and safety or could cause significant property loss. Examples of these violations are improper or non-operating emergency shutoff valves,² and failure to use wheel stops for LP-gas delivery trucks during the gas transfer process.

The LP-Gas Section's response to the investigative report included the following corrective actions:

- 1) Management will discuss with General Assembly changing statute to reference a LP-Gas Section policy that includes monetary penalties for LP-gas violations.
- 2) Management will establish and monitor milestones for its violation tracking database.
- 3) Management will formalize a process for passing along LP-gas truck violations identified by the LP-gas inspectors during on-site inspections to the Motor Carrier Enforcement Administration in the Department of Public Safety.³

¹ *Liquefied Petroleum Gas* investigative report issued in December 2011 (INV-2011-0371).

² Emergency shut off valve are designed to stop the flow of LP-gas in the event of a hose rupture or piping break at the transfer area.

³ The Hazardous Materials Program within the U.S. Department of Transportation was later identified to be responsible for enforcing the LP-gas truck violations under federal jurisdiction.

AUDIT SCOPE AND OBJECTIVES

The objective of this financial related audit was to determine whether the Liquefied Petroleum Gas Section took appropriate corrective action to adequately address recommendations made to management in the *Liquefied Petroleum Gas* investigative report issued in December 2011. In conjunction with this objective, we also sought to identify improvements needed in internal control over selected fiscal matters.

Management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that relevant objectives are achieved. Errors or fraud may nevertheless occur and not be detected because of the inherent limitations of internal control. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or that compliance with policies and procedures may deteriorate. Our audit does not provide a basis for rendering an opinion on internal control, and consequently, we have not issued such an opinion.

Our audit scope covers the period from January 1, 2013, to March 15, 2013. However, transactions from later periods were reviewed to gather sufficient and appropriate evidence to support audit findings.

METHODOLOGY

To accomplish the audit objectives, auditors gained an understanding of internal control over matters described in the *Audit Scope and Objectives* section of this report and evaluated the design of the internal control. Auditors then performed further audit procedures consisting of tests of control effectiveness and/or substantive procedures that provide evidence about the audit objectives. Specifically, they interviewed personnel, observed operations, reviewed policies, analyzed records, and examined documentation supporting recorded transactions and balances, as considered necessary in the circumstances. They applied a non-statistical approach to the sample of inspections but chose sample sizes comparable to those that would have been determined statistically. As a result, the results cannot be projected to the population.

As a basis for evaluating internal control, auditors applied the internal control guidance contained in professional auditing standards. As discussed in the standards, internal control consists of five interrelated components: (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring.

Auditors also considered Control Objectives for Information and related Technology (COBIT) and best practices in industry publications for governance of software and system development.

We conducted this audit in accordance with generally accepted government auditing standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS AND CONCLUSIONS

Auditors determined that the Liquefied Petroleum Gas Section took corrective action to address the recommendations made in the *Liquefied Petroleum Gas* investigative report issued in December 2011. The audit also identified deficiencies in internal control and/or instances of noncompliance or other matters that are considered reportable under generally accepted government auditing standards. These items are described in the *Audit Findings, Recommendations, and Responses* section of this report. Management's responses are presented after each audit finding. We did not audit the responses, and accordingly, we express no opinion on them.

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

1. CORRECTIVE ACTION TAKEN BUT IMPROVEMENTS NEEDED

The Liquefied Petroleum Gas Section (LP-Gas Section) took corrective actions to address recommendations from a previous State Auditor investigative report.⁴ In January 2013, the LP-Gas Section implemented its Generic Regulatory and Inspection Database (GRID) to record and track all types of LP-gas inspections, violations, and enforcement actions. To ensure the assessment of penalties, the GRID system includes a table to automatically assess penalties based on violation severity and occurrences. As recommended, the LP-Gas Section also reports critical LP-gas violations under federal jurisdiction to U.S. Department of Transportation. However, further improvements are needed to ensure LP-gas violations are effectively enforced.

Penalty Matrix Included in New Tracking System

The prior investigative report found that the LP-Gas Section assessed \$7,100 in fines within a 12-month period and recommended that the LP-Gas Section pursue a statute change to strengthen its ability to consistently impose monetary penalties for LP-gas violations. While the LP-Gas Section decided not to pursue a change in law, it achieved the intended effect by including its penalty matrix in the GRID system. The LP-Gas Section uses the GRID system to issue warnings and assess penalties for LP-gas violations in accordance with the penalty matrix, thus meeting the intent of the recommendation.

Based on inspection data in GRID, the LP-Gas Section issued 283 warnings and 80 penalties (\$16,000) between January 1 and March 15, 2013. On an annualized basis, that amount is almost 11 times the assessed amount noted in the prior investigation.⁵

System's Business Objectives Not Fully Met

The LP-Gas Section acted quickly to implement GRID. However, system requirements were not always thoroughly vetted prior to implementation and controls were inadequate to assure the quality of system performance.

The main system and related process issues identified during the audit are:

1. LP-gas dealer not in GRID - LP-gas dealers are required to be licensed by the LP-Gas Section.⁶ One out of 27 licenses issued between January and mid-May 2013, was missing in GRID. There was no reconciliation to ensure all licensed businesses are in GRID. A missing licensee in GRID means the business cannot be scheduled for routine inspections.

⁴ *Liquefied Petroleum Gas* investigative report issued in December 2011 ([INV-2011-0371](#)).

⁵ \$16,000 penalty / 2.5 months (January 1 to March 15, 2013) x 12 months a year = \$76,800 / \$7,100 (quoted in prior investigative report) = 10.82.

⁶ North Carolina General Statute § 119-56.

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

2. Follow-up inspections were not consistently scheduled and inspection due date was overwritten - GRID is set up to schedule a follow-up inspection and assign a due date⁷ for the inspection either 30 or 60 days after a warning or penalty letter is generated, respectively. A repeat violation found in a follow-up inspection should result in a penalty. However, some follow-up inspections were missing in GRID and there was no monitoring measure to ensure the inspections are scheduled and completed as designed (see finding 2).

In addition, the system overwrites the due date with the completion date of the inspection, preventing the LP-Gas Section from efficiently monitoring the timeliness of inspections.

3. The penalty matrix in GRID was misinterpreted - A penalty matrix in GRID drives the penalty calculation for LP-gas violations. The penalty assessed is supposed to increase based on the number of occurrences for each **violation**⁸ (emphasis added). Since most violations in the matrix receive a warning on the first occurrence, a higher penalty amount (for the second occurrence) would be assessed if the violation was found again during a follow-up inspection.

However, the LP-Gas Section found that the matrix was not implemented in GRID as originally intended. The penalty amount was calculated based on the number of **penalties** (emphasis added) issued instead violations. As a result, a lower penalty amount was assessed even though a repeat violation was found during a follow-up inspection.

4. System updates introduce errors - System updates deployed after the January 2013 implementation introduced errors. While reviewing settlement letters as part of penalty reduction testing, the auditors found that the settlement letter template was updated retroactively. As a result, the letters generated in GRID prior to the update were changed and no longer match the copies sent to the violators and retained on file. A subsequent update to correct the issue resulted in incorrect penalty letter date referenced in the settlement letter.

Collectively, these issues negatively impact the quality of GRID's performance and its ability to help the LP-Gas Section to identify inspections for completion, assess correct penalty amounts, and maintain consistency of system data.

⁷ A system assigned date that indicates when an inspection is ready to be completed.

⁸ *North Carolina General Statute § 119-59*. "The penalty may not exceed three hundred dollars (\$300.00) for the first violation, five hundred dollars (\$500.00) for a second violation, and one thousand dollars (\$1,000) for a third or subsequent violation."

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

IT Related Controls Should Be in Place

The LP-Gas Section did not implemented adequate system development and process controls to prevent the omissions above although state law requires it.

State law gives the State Controller the authority to established control standards for state agencies.⁹ By law, management of each state agency bears the full responsibility for establishing and maintaining a proper system of internal controls within the agency.¹⁰

The State Controller directed state agencies to adopt Control Objectives for Information and related Technology (COBIT)¹¹ as the information technology internal control standards for the state.¹² COBIT states it is important for a process to achieve its intended purpose. To make that determination, COBIT suggests that an assessment be done to compare the way the system functions to the way it should function.

Recommendation:

The LP-Gas Section should ensure that all the issues noted above are corrected.

In collaboration with its programmers the LP-Gas Section should ensure its business requirements are clearly understood, assess whether the system and related processes have achieved the intended outcomes, and implement controls to ensure business objectives will be achieved.

Agency Response:

Any such glitches or adjustments identified by the Department and/or the State Auditor were corrected immediately by the Department's IT staff.

A formal post-implementation review will be conducted to document that the desired outcomes have been achieved. It would also provide for a status report on the outstanding pieces being, or to be, developed; this will be completed by December 31, 2013.

2. ROUTINE AND FOLLOW-UP INSPECTIONS ARE NOT MONITORED

There is a lack of management monitoring on LP-gas dealers and transporters inspections. The Liquefied Petroleum Gas Section (LP-Gas Section) relies on individual inspectors to schedule and track routine inspections on their own. LP-Gas Section management does not appear to

⁹ North Carolina General Statute § 143D-6.

¹⁰ North Carolina General Statute § 143D-7.

¹¹ COBIT is an IT governance framework based on more than 40 standards and best practices for information technology from standards setting bodies worldwide.

¹² Enhancing Accountability in Government through Leadership and Education (EAGLE) policy - Internal Control Standards (effective July 1, 2008.)

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

use any existing tools to monitor the progress of routine inspections. Four out of 46 inspections (9%) selected for testing were not followed up on until 27 to 52 days after their due dates.¹³ As a result, routine and follow-up inspections may not be performed in a timely way to identify and enforce LP-gas violations, increasing safety risks to LP-gas workers and the general public.

Routine Inspections Are Not Monitored

The LP-Gas Section performs routine inspections of LP-gas dispensers, bulk plants and trucks to enforce safety regulations. In the past, the field inspectors were expected to complete routine site inspection every 12 months and truck inspection every 6 months.

Recently, the LP-Gas Section emphasized follow-up inspections and field personnel were instructed to complete routine inspections at the previous frequency "when physically possible."

LP-Gas Section management does not appear to know the number of inspections that each inspector should complete each year and does not use any existing tools to monitor the progress of routine inspections. Individual inspectors are expected to identify, schedule, and track inspections completed on their own. Per inquiry of three field inspectors, not all of them knew how many routine inspections they need to complete a year and how many they have completed at the time of inquiry.

According to standards issued by U.S. General Accounting Office (GAO),¹⁴ actual performance data should be collected and "continually compared against expected/planning goals and differences are analyzed."

The lack of monitoring means less assurance that the LP-Gas Section resources are adequately managed.

Out of 756 inspections performed between January 1 and March 15, 2013, 305 had violations. Without timely inspections, there is an increased safety risk to LP-gas workers and the general public.

Follow-Up Inspections Are Not Timely

Follow-up inspections are not performed timely to ensure violations have been addressed and penalties that could help ensure compliance would be assessed.

Based on the GAO's standards, the Section should "established and monitor performance measures and indicators" related to the follow up inspections. A review of follow-up inspections in GRID as of May 14, 2013, showed two out of eight inspectors had 20 and 31 follow-ups, respectively, that have been outstanding for two to 10 weeks after their due dates.

¹³ Due date is estimated based on the date of warning letter plus 30 days.

¹⁴ U.S. GAO Internal Control Management and Evaluation Tool, August 2001.

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

One of these outstanding inspections had a critical violation (a rejected fire safety analysis) that was not addressed until seven weeks after its due date.

In addition, four out of 46 selected inspections (9%) had follow-ups completed more than 27 days after their due dates.¹⁵ More than half of the violations found in these inspections are major to critical or pose immediate hazard (e.g., no fire safety analysis, a leak at top of the tank).

Recommendation:

The LP-Gas Section should develop necessary policies and procedures that include performance measures on follow-up inspections that align with the LP-Gas Section's regulatory and business objectives.

The LP-Gas Section should use existing or develop new monitoring tools to collect actual performance data for evaluation against expected goals on routine and follow-up inspections, and take appropriate actions when differences are found.

Agency Response:

Based on data gathered in 2013, Division management will establish inspection frequencies, better monitor inspection completions and review inspector workloads. Beginning in early 2014, the GRID database will allow the Division to maximize and utilize resources for scheduling routine and re-inspections when violations are documented.

3. PENALTY REDUCTIONS WERE NOT SUPPORTED BY CLEARLY DEFINED CRITERIA

Penalties that could have been assessed and collected to encourage compliance with LP-gas safety rules are routinely reduced. A total of 27 out of 80 (34%) penalties issued between January 1 and March 15, 2013, were reduced (i.e. settled) by 50% each. Although penalties were initially assessed based on violation severity, the Liquefied Petroleum Gas Section's (LP-Gas Section) existing settlement process procedures do not include clearly defined criteria for reducing penalties.

In addition, payment terms in the settlement agreements were not enforced and violators were allowed to pay reduced penalty amounts after the due date.

¹⁵ Due date is estimated based on the date of warning letter plus 30 days.

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

Violation Severity and Overall Safety Compliance Not Considered

The severity of the violation is not considered when penalty reduction is made. For example, a company was penalized for building a bulk plant site (six 1,000 gallon liquefied petroleum tanks) prior to getting approval from the LP-Gas Section. Per LP-Gas Section policy,¹⁶ this is a violation of Liquefied Petroleum Gas Code¹⁷ and “container installation is not permitted until plans are approved.” The Section’s penalty matrix also states this is a “critical” violation that poses “possible immediate hazard.” An instant penalty of \$200 was assessed and subsequently reduced to \$100.

While the LP-Gas Section verifies that the violation is fixed before reducing the penalty, other violations at the business are not considered in the settlement decision. Eight of the 27 penalties reduced between January 1 and March 15, 2013, were reduced even though each of the businesses had five or more other violations found in the same inspection. These other violations range from minor violations like “missing pricing display” to more serious ones such as “no remote shutoff in liquid outlet.”

Settlement Agreement Terms Not Enforced

The LP-Gas Section did not enforce the payment terms in the settlement agreement. Violators were allowed to pay reduced penalty amounts after the due dates. The agreement requires the reduced penalty be paid within 14 days of the agreement date or the original penalty amount “shall render due and payable.”

Process Controls Should Be in Place

The LP-Gas Section issues penalties to help ensure LP-gas businesses comply with LP-gas safety rules and regulations. Without clearly defined criteria, these penalties may be reduced inconsistently over time and with personnel changes. As a result, businesses with severe violations or poor safety performance would still receive penalty reductions.

According to standards issued by U.S. General Accounting Office (GAO),¹⁸ “appropriate policies and procedures should exist with respect to each of the agency’s activities” such as penalty reduction. In addition, controls should be in place to address the risks in the penalty reduction process as described above.

Recommendation:

The LP-Gas Section should devise or modify procedures to ensure penalty reductions are calculated in accordance with clearly defined criteria.

The LP-Gas Section should enforce its penalty payment terms.

¹⁶ Standards Division - Submittal Requirements for LP-Gas Bulk Storage Facilities (<http://www.ncagr.gov/standard/LP/LPgasConcerns/submittal.htm> last updated July 26, 2011)

¹⁷ National Fire Protection Association (NFPA) 58: Liquefied Petroleum Gas Code (2011 Edition)

¹⁸ U.S. GAO Internal Control Management and Evaluation Tool, August 2001.

AUDIT FINDINGS, RECOMMENDATIONS, AND RESPONSES

Agency Response:

Going forward Division management recognizes there may be other circumstances, such as the inspection history GRID will provide, that could factor into settlement negotiations and will consider how to include them in future process control decisions.

The Department has recognized that a 14-day payment period was not always practical and the timeframe has been changed to 30 days. We understand that in a few cases penalty payments may arrive a few days late and in all likelihood those payments will be accepted.

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Auditor's Response

We are required to provide additional explanation when an agency's response could potentially cloud an issue, mislead the reader, or inappropriately minimize the importance of our findings.

Generally Accepted Government Auditing Standards state,

When the audited entity's comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditor's recommendations, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement.

To ensure the availability of complete and accurate information and in accordance with Generally Accepted Government Auditing Standards, we offer the following clarifications.

System's Business Objectives Not Fully Met

The full response from the Department of Agriculture & Consumer Services (Department) includes extraneous background information that clouds the issue and minimizes the finding.

Regardless of the method the Department used to implement the Generic Regulatory and Inspection Database (GRID), the Department should have implemented adequate system development and process controls to achieve its intended purpose and that an assessment be done to compare the way the system functions to the way it should function.

As noted in the report, various issues collectively affected the quality of GRID's performance and its ability to assess correct penalty amounts and ensure accuracy of system data. System deficiencies identified by the Department or auditors included:

1. A licensed LP-gas dealer was not included in the GRID system.
2. The GRID system overwrote the follow-up inspection due date with the completion date of the re-inspection, preventing the LP-Gas Section from efficiently monitoring the timeliness of inspections.
3. The penalty matrix in GRID initially miscalculated the penalty amount for repeat violations.¹⁹

¹⁹ If the penalty matrix had been correctly implemented, \$5,700 would have been assessed for 12 follow-up violations versus the \$3,600 actually assessed. This equates to a shortage of \$2,100 (58% more than the amount assessed).

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4. A system update to correct settlement letter wording erroneously changed the penalty letter date.

As a result of the apparent implementation deficiencies, auditors recommended that the Department conduct a post implementation review to assess whether the system and related processes have achieved the intended outcomes and proactively implement controls to ensure business objectives will be achieved in future system development projects.

Ultimately, the Department's response letter states that glitches identified by the auditors were corrected and a formal post-implementation review will be conducted to document that the desired outcomes have been achieved.

Penalty Reductions Were Not Supported By Clearly Defined Criteria

The Department's response highlights its statutory discretion when deciding whether or not to assess penalties or if non-monetary sanctions, education, or training are sufficient to address the underlying violation. These references minimize the importance of the finding.

Auditors acknowledge that the Department has the discretion, per state law, to determine whether a penalty should be assessed based on violation severity. However, the Department does assess penalties to encourage compliance with LP-Gas safety rules.

As noted in the report, out of the 27 penalties assessed and reduced between January 1 and March 15, 2013, all 27 were reduced by 50% each.

Although penalties were initially assessed based on violation severity, the standard 50% reduction of a penalty does not consider the number of other violations at the business in the settlement decision nor does it consider a historical view of a business' prior violations.

As noted in the report, eight of the 27 penalties reduced between January 1 and March 15, 2013, were reduced even though each of the businesses had five or more other violations found in the same inspection. These other violations range from minor violations like "missing pricing display" to more serious ones such as "no remote shutoff in liquid outlet."

Ultimately, the Department's response states that management acknowledges there may be other circumstances that could factor into settlement negotiations and will consider including them in the process in the future.

The Governor, Legislators, and the citizens of North Carolina should consider the clarification provided above when using this report to evaluate the operation of Liquefied Petroleum Section in the Department of Agriculture & Customer Services and holding government managers accountable for their programs.



Steve Troxler
Commissioner

North Carolina Department of Agriculture and Consumer Services

October 14, 2013

The Honorable Beth A. Wood, State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0601

Dear Ms. Wood:

This letter is in response to your follow-up report regarding the financial-related audit involving the Liquefied Petroleum Gas Section in the Standards Division. We are pleased to provide responses to the findings from your follow-up investigation during the period of January 1, 2013, to March 15, 2013, a copy of which was provided to us on September 26, 2013. Below, we address the findings and offer information and context that provide a more complete picture of the Division's work to implement a new system for handling violations of the LP Gas Code.

1. CORRECTIVE ACTION TAKEN BUT IMPROVEMENTS NEEDED

We are pleased the report recognizes corrective actions taken by the Department. The Department, subsequent to the investigation concluded in December 2011, immediately assembled a team of internal experts to develop an Information Technology solution for the tracking of L.P. gas violations, assessing civil penalties, and sharing truck violations with the U.S Department of Transportation. By using an internal project team of programmers, the Department conservatively estimates it saved taxpayers \$100,000 in development costs.

In an effort to be holistic in our approach, the team reviewed multiple options, collected user requirements and developed a benchmarking process. Due to time constraints and in an effort to be judicious with limited resources, the team decided to enhance an existing IT database and code base. The Generic Regulatory and Inspection Database (GRID) had been utilized in three other successful programs within the Department and provided the initial framework necessary to implement this program. To adapt this database to fit these specific needs, the team used the Division's existing Access database system as a model for the functionality desired. The team utilized the Agile software development approach to ensure uniformity in development and application. This approach, which is widely used in both the public and private sectors, promotes adaptive planning, evolutionary development and delivery, and encourages rapid and flexible response to change. It is a conceptual framework that promotes interactions between the programmers and the Division throughout the development cycle. The database was developed as an online application in an effort to maximize its functionality and facilitate field staff usability.

The initial rollout of this database in January 2013 exceeded our target of a 90% effective working application. The goal of the Agile approach is to have a functional product when initially implemented, with rapid response to any issues. As with any new IT program or database, minor glitches are to be expected. As noted in the auditor's report, there were glitches and some missing information in the database initially. However, it should be noted that the initial rollout of this database coincided

with the current audit by the Office of the State Auditor (January 1, 2013, through March 15, 2013). Any such glitches or adjustments identified by the Department and/or the State Auditor were corrected immediately by the Department's IT staff. The Division is continuously monitoring this database to ensure its functionality and will continue to improve the service it provides.

Agency Response

A formal post-implementation review will be conducted to document that the desired outcomes have been achieved. It would also provide for a status report on the outstanding pieces being, or to be, developed; this will be completed by December 31, 2013.

2. ROUTINE AND FOLLOW-UP INSPECTIONS ARE NOT MONITORED

Prior to the GRID database, it was difficult to monitor and track the number of inspections and re-inspections conducted by the Division's inspectors due to the sheer volume of paper-based inspections and limited resources. Based on data gathered in 2013, Division management will establish inspection frequencies, better monitor inspection completions and review inspector workloads. The team will continue to adjust the GRID database to enhance the program's efficiency in 2014.

Agency Response

Beginning in early 2014, the GRID database will allow the Division to maximize and utilize resources for scheduling routine and re-inspections when violations are documented.

3. PENALTY REDUCTIONS WERE NOT SUPPORTED BY CLEARLY DEFINED CRITERIA

In conducting the inspections required by N.C. Gen. Stat. § 119-54 *et seq.*, NCD&CS's primary function is ensuring compliance with the safety regulations as set forth in statute. Safety is first and foremost our primary concern.

Violation Severity and Overall Safety Compliance Not Considered

The severity of a violation is always taken into account when assessing a civil penalty as dictated in N.C. Gen. Stat. § 119-59(c). This statute provides that the Department **may** assess a civil penalty against any person who violates a provision of the statute. The assessment of a penalty is discretionary, not mandatory. In assessing the penalty, the Department considers the nature of the violation, the history of the violator, and how best to achieve compliance, and thus our ultimate goal: safety. The value and importance of the Department having discretion in assessing penalties was further recognized by the General Assembly and codified into law this past legislative session. General Statute 106-22.6 states:

When any board, commission, or official within the North Carolina Department of Agriculture and Consumer Services has the authority to assess civil penalties, such authority shall not be construed to require the issuance of a monetary penalty when the board, commission, or official determines that nonmonetary sanctions, education, or training are sufficient to address the underlying violation.

When the Division determines that a civil penalty should be assessed, the statute clearly provides the maximum amount of the penalty. The penalty may not exceed \$300 for the first violation, \$500 for a second violation, and \$1,000 for a third or subsequent violation. In determining whether to assess the maximum amount allowed for the civil penalty, the Division considers the degree and extent of harm or potential harm that has resulted, or could have resulted, from the violation. See N.C. Gen. Stat. § 119-59(c).

On a Division level it has been determined that if a violator corrects the violations noted in the inspection and comes into compliance, the civil penalty generally will be reduced by 50%. This

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encourages compliance and provides uniformity in how the Division treats those who have corrected noted deficiencies. It is also consistent with our primary goal of ensuring public safety. This 50% reduction in the civil penalty is neither arbitrary nor capricious. The severity of the violation(s) and extent of harm are considered in the initial assessment of the civil penalty. Thus, an entity with more violations and/or higher risk of harm will be assessed a higher penalty and, consequently, will pay a higher settlement amount. This determination is within the Division's authorized discretion.

Settlement Agreement Terms Not Enforced

As stated above, the Division's ultimate goal is to gain compliance with the safety statutes. If an entity pays a reduced civil penalty pursuant to agreement with the Division a few days late, the Division has accepted the payment. The goal of compliance (correction of any safety violations) was met prior to accepting payment. Additionally, the Division has since determined that the 14-day payment period was not always practical and has changed the time frame to 30 days. Moreover, if a payment is not received timely, the Division or the Attorney General's office sends out a written demand for payment. Many times before this is accomplished, payment has been received. It is thought to be a better use of the State's time and resources to accept the late payment given that the safety violations have been corrected. In instances when the Division or Attorney General's office sends a written demand for payment, the violator must pay the full amount of the penalty plus interest of 5 percent and a late fee of 10 percent.

Process Controls Should Be in Place

The Department as a whole is currently considering the viability of developing settlement agreement guidelines for use by all regulatory divisions. At this time, it is not known whether such an approach would be feasible or beneficial. However, the Standards Division does have process controls in place with regard to settling civil penalties. Specifically, the 50% reduction mentioned in the audit report and reviewed in this response is one measure of ensuring consistent and routine application of the civil penalty matrix over time and regardless of personnel changes. It is simple, easily applied and equitable to the parties involved. However, Division management does recognize there may be other circumstances that could factor into settlement negotiations and will consider including them in the process in the future.

Agency Response

The General Assembly has provided the Department enforcement guidance for all its regulatory programs. That guidance will be followed as well as utilizing a common sense approach to resolving regulatory issues.

The Department has recognized that a 14-day payment period was not always practical and the timeframe has been changed to 30 days. We understand that in a few cases penalty payments may arrive a few days late and in all likelihood those payments will be accepted.

Going forward Division management recognizes there may be other circumstances, such as the inspection history GRID will provide, that could factor into settlement negotiations and will consider how to include them in future process control decisions.

Thank you for the opportunity to provide additional information on your findings. Please let me know if you have any questions.

Sincerely,



Steven W. Troxler

Commissioner

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