



**SPECIAL AUDIT OF
THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION
GROWING GREENER GRANT
ME # 359837**

February 2002

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February 14, 2002

The Honorable Mark S. Schweiker
Governor
Commonwealth of Pennsylvania
Harrisburg PA 17120

Dear Governor Schweiker:

The Department of the Auditor General has completed a special audit of one of the first grants awarded by the Department of Environmental Protection (DEP) as part of the Commonwealth's Growing Greener Program, enacted in late 1999. The recipient of the \$240,000 grant was the Woodduck Chapter of Trout Unlimited (WCTU), a private non-profit conservation organization located in Philipsburg, Pennsylvania.

The special audit was conducted by our Office of Special Investigations (OSI) in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. Fieldwork on the audit was conducted between April and October 2001. The objectives of the special audit were to determine compliance with appropriate statutes, regulations and guidelines, assess internal controls and determine the validity of a complaint concerning an alleged violation of contracting procedures and conflicts of interest.

The environmental project funded through the grant was the design and construction of a mine draining treatment system for Chiller Seeps, a source of pollution in the Cold Stream Watershed near Phillipsburg. The goal of the still-uncompleted project is worthwhile and important to local residents as well as the Commonwealth. We found no evidence of improprieties on the part of WCTU. The DEP staff, as well as representatives of WCTU and its contractors, cooperated with us during the inquiry.

However, the audit disclosed that DEP did not ensure that there was compliance with a requirement of the project agreement concerning the construction subcontract. The documentation of project costs was inadequate. DEP did not have policies and procedures in place to prevent apparent conflict of interest issues from arising in connection with the role of DEP employees involved in the grant approval process and the project. DEP also selected and awarded the grant prior to completing the review process it had set up for review, grading and selection of Growing Greener Program grants.

The audit report contains six recommendations to strengthen the management of the Growing Greener Program, including better oversight of the grant application and approval process, a requirement that grant recipients justify the choice of subcontractors when there is no competitive bidding, better controls over project cost specifications and invoicing and a conflict of interest policy to govern activities of DEP employees involved in the program. In DEP's response, it pointed out that it has taken steps to address the audit's findings.

Given the importance of the Growing Greener Program to DEP, the administration and our citizens, I urge you to ensure that the DEP takes prompt action on the recommendations. I also ask that you make sure, through regular monitoring and audits, that those actions, as well as the commendable positive steps DEP has already taken, are implemented fully and followed in the future.

Sincerely,

Robert P. Casey, Jr.

INTRODUCTION AND BACKGROUND

The Department of the Auditor General (the Department) conducts special audits of the affairs of all Commonwealth Departments pursuant to the Department's authority under the Fiscal Code.¹

In 1999, the General Assembly passed the Environmental Stewardship and Watershed Protection Act (the Act) which established the "Growing Greener" Program (the Program).² The Program provides \$645.9 million to improve Pennsylvania's environment over a five-year period. As part of the Program, the Department of Environmental Protection (DEP) is authorized to spend about \$240 million in grants to support local projects that protect and restore watersheds, reclaim abandoned mines and wells and improve the Commonwealth's water and sewer infrastructure. The grants are available to government bodies, such as counties and county conservation districts, as well as private organizations involved in restoration and protection of the environment.

Trout Unlimited (TU) is a private non-profit organization with chapters in Pennsylvania and other states. TU's mission is to "conserve, protect and restore North America's trout and salmon fisheries and their watersheds."³ The Woodduck Chapter of Trout Unlimited (WCTU), Philipsburg, PA, is a subsidiary of TU and the Pennsylvania Council of TU. WCTU's purpose is to conserve the quality and quantity of the water resources of Centre and Clearfield counties.

In January 2000, shortly after the Program was enacted, the Governor's Office announced a "100 Days of Growing Greener" initiative. Pursuant to the initiative, for 100 days, from early January 2000 to Earth Day (April 22), 2000 Program grants were announced on a weekly basis.

An application for a Program grant, dated February 7, 2000, was submitted by WCTU. The application was for the project known as the "Cold Stream Restoration Project Chiller Seeps Mine Drainage Abatement." Cold Stream is a watershed near the Borough of Philipsburg, Centre County. "Chiller Seeps" is a source of mine drainage on land in the Cold Stream watershed.

According to the application, Cold Stream was impaired as a result of acid mine drainage and the WCTU had been involved in restoration efforts in the Cold Stream watershed for over 15 years. In the application, WCTU requested funds for a project to design and implement a mine drainage treatment system for Chiller Seeps.

¹ 72 P.S. § 402.

² 27 Pa. C.S. § 6001, *et seq.*

³ TU website – www.tu.org.

The application included a list of WCTU's partners in the restoration effort including DEP, its Bureau of Abandoned Mine Reclamation and its Hawk Run District Office, the Pennsylvania Department of Transportation, the Pennsylvania Fish and Boat Commission, the Centre County Conservation District, the landowner (Wampum Hardware Company, New Galilee, PA) and Skelly & Loy, Inc., a Harrisburg, PA engineering consulting firm. The application also stated that Skelly & Loy, Inc. would provide services to perform the design and permits for the project's "passive treatment system" and that WCTU and Skelly & Loy, Inc. would supervise all construction activities.

The proposal contained a three phase work plan, a project schedule, a proposed \$249,000 budget, a description of the passive treatment system design, cost estimates and letters of support from organizations and individuals.

On March 3, 2000, awards by DEP of 26 Program grants totaling \$3.7 million were announced in a press release. Included among those grants was a \$240,000 grant to the WCTU for the Chiller Seeps project.

The agreement between the Commonwealth, acting through DEP, and WCTU, is contained in a document, ME# 359837, dated April 10, 2000. In the agreement, WCTU is referred to as the "Sponsor" of the "Cold Stream Restoration Project Chiller Seeps Mine Drainage Abatement." The agreement contains general conditions, special provisions and "sponsor obligations." The term of the agreement was from March 3, 2000, to September 30, 2001. The Project completion date was later extended to June 30, 2002. The project budget was the same as that in the application, i.e., \$249,000, with \$211,400 of that designated for construction.⁴

In the summer of 2000, the Department received a complaint concerning the WCTU grant. The Department's Office of Special Investigations (OSI) made preliminary inquiries, including requesting information from DEP. In a memorandum dated February 6, 2001, DEP's audit coordinator notified OSI that DEP would not release any information to OSI unless the Department was conducting an audit that conformed to the auditing standards established by the Comptroller General of the United States.

⁴ The total budget included \$9,000 in matching funds from WCTU.

On April 2, 2001, the Department notified the Secretary of DEP that OSI was conducting a special audit of the Program Grant ME # 359837. The audit covered the period from January 1, 2000, through April 23, 2001, and was conducted in accordance with established Government Auditing Standards.⁵

The objectives of the special audit were to determine compliance with appropriate statutes, regulations, guidelines and procedures, assess internal controls and determine the validity of allegations of failure to follow established procedures and policies, including those pertaining to conflicts of interest. The special audit did not include a review of the extent to which the Project has abated mine drainage.

To accomplish the objectives, OSI reviewed records maintained by WCTU, the construction contractor, the engineering consultant, and the records in DEP's central, regional, and field offices. OSI interviewed DEP employees, WCTU officers and representatives of the construction contractor and the engineering consultant.

The findings and recommendations of the draft report of the special audit were provided to DEP and reviewed with DEP representatives on November 27, 2001. DEP's response to the draft report was received on December 20, 2001, and has been incorporated into the final report.

⁵ United States General Accounting Office, Government Auditing Standards (July 1999 Revision).

EXECUTIVE SUMMARY

DEP failed to ensure that the project sponsor complied with the terms of the project agreement. Specifically, the WCTU's subcontract for construction was not incorporated into the approved project proposal and was not approved in advance by DEP. The project's construction costs were not documented adequately in reports to DEP.

DEP failed to prevent the development of apparent conflicts of interest in connection with the role of DEP employees involved in the grant project.

DEP selected this project to be awarded a grant before completing the review and selection process that was instituted for Growing Greener Program grants.

RECOMMENDATIONS

1. DEP should establish procedures to ensure that grant applications and approval documents for this Program are complete and contain all of the required information before giving final approvals to any project. (See Finding No. 1.)
2. When grant funds are to be used to pay for subcontracts awarded without competitive bidding, DEP should require grant recipients to submit copies of subcontracts and documentation showing the justification for selection of the subcontractors. This should be done prior to the release of state funds to pay for the costs of the subcontracts. (See Finding No. 1.)
3. DEP should also ensure that all invoices submitted by subcontractors specify actual project costs by project cost categories in accordance with the terms of the project agreement. (See Finding No. 1.)
4. In regard to this grant, DEP should require WCTU and its subcontractors to review and resubmit invoices. DEP should then make a determination of whether any state funds were spent improperly or improperly acquired or disposed of, especially in connection with the timbering activities at the site. (See Finding No. 1.)
5. DEP should ensure that its staff receives appropriate guidance concerning ethical requirements, potential conflicts of interest and the avoidance of situations where there could be improper influence over actions and

decisions of scorers and other Department employees who review grant applications. (See Finding No. 2.)

6. DEP should follow its policies, procedures and guidelines for review, scoring and awarding grants in all cases to ensure that the process is fair, reasonable and documented adequately. (See Finding No. 3.)

Finding No. 1 – DEP failed to ensure that the project sponsor complied with the terms of the project agreement. Specifically, the WCTU’s subcontract for construction was not incorporated into the approved project proposal and was not approved in advance by DEP. The project’s construction costs were not documented adequately in reports to DEP.

WCTU’s grant application did not include a construction subcontract or the identity of the construction contractor. The application contained a project schedule which included solicitation of construction bids as one of the specific work tasks. A representative of Skelly & Loy, Inc. told OSI that, at the time the firm was preparing the application, it was believed that competitive bidding would be required for all contracts paid for with grant funds. According to the firm’s representative, a DEP attorney informed Skelly & Loy, Inc. that competitive bidding would not be required. The firm decided to use a “design build” approach, i.e., a concept was developed for the passive treatment system and, after the amount of grant funds budgeted for construction was determined, the design and the construction budget were presented to several construction firms by Skelly & Loy, Inc. WCTU was then given a list of contractors that had stated they could perform the work.

On August 1, 2000, the WCTU membership voted to hire E.M. Brown, Inc., Clearfield, PA, one of the contractors on the above list, to perform the construction work. According to the representative of Skelly & Loy, Inc. and WCTU officials, WCTU officials evaluated E.M. Brown, Inc.’s experience and visited one of its construction sites prior to the vote.

According to the representative of Skelly & Loy, Inc., the “design build” approach saves time and money because a contractor bid package and specifications are not required. There is also no need for formal change orders or new project specifications in the event of changes in the project.

The Act contains no specific Commonwealth competitive bidding requirements applicable to private organizations that are awarded Program grants. Procurement of supplies, services and construction by Commonwealth agencies is subject to the Commonwealth Procurement Code (also known as Act 57).⁶ Act 57’s requirements are expressly not applicable to grants. In a letter to OSI, DEP’s Director of the Bureau of Fiscal Management states that “competitive bidding is not a requirement under the Growing Greener grants program. We are not aware of any State statutes addressing the subject nor are there any regulations or written policies that apply.”

⁶ 62 Pa. C.S. § 101 et seq.

According to DEP officials, recipients of Growing Greener Program grants are required to use competitive bidding procedures only when the grant recipient is itself subject to such requirements as a local government body, such as a borough or county agency, or if the grant recipient is a private organization with its own rules or bylaws that require competitive bidding in contracting. WCTU's bylaws contain no competitive bidding requirements.

To provide a degree of oversight over the financial management of the construction project, DEP included requirements concerning the construction work in the terms of the grant agreement with WCTU. WCTU did not comply with all of those requirements and DEP did not correct those deficiencies prior to the construction work or before making the grant payments.

- a. DEP failed to ensure that the construction subcontract was incorporated in the approved proposal or approved in advance by DEP.

Paragraph No. 3 under Section C (Sponsor Obligations) of the Agreement between DEP and WCTU (ME #359837) states:

no subcontract or service purchase agreement may be entered into by the sponsor for execution of the project activities or provision of services to the project (other than purchase of supplies or standard commercial or maintenance services) which is not incorporated in the approved proposal or approved in advance by the Department.

The February 7, 2000, project proposal submitted by WCTU did not incorporate a construction subcontract or identify the construction contractor. The April 10, 2000, Agreement between DEP and WCTU also does not incorporate a construction subcontract or identify the construction contractor. The only relevant reference in the Agreement is the statement "construction contractor – to be determined." There is no documentation or other evidence that DEP approved a construction subcontract in advance of entering into the agreement or that WCTU requested such approval. DEP's project advisor for this grant attended the August 1, 2000, WCTU meeting at which WCTU voted to hire E.M. Brown, Inc. to do the construction work. However, there is no evidence that the DEP's official's attendance at the meeting included an approval of the agreement.

Furthermore, there was no written agreement between WCTU and the construction contractor. The only documentation relating to the agreement that was provided to OSI was a letter from WCTU to E.M. Brown, Inc. dated August 9, 2000. The letter stated that the firm had been selected “as contractor for the Chiller Seeps remediation project,” that the maximum amount available for construction was \$211,400 and that all payments would be made in accordance with the Program’s policies and procedures. The letter contained no references to the project’s design or plans.

WCTU officials had no explanation for the absence of a written contract. The site supervisor for the construction contractor told OSI that there were no project specifications; that the company was provided with a “concept,” a blueprint and a site location. DEP officials told OSI that they were not aware that WCTU did not have a written agreement with the construction contractor.

b. There was inadequate documentation of project costs in reports to DEP

The Agreement between DEP and WCTU contained a requirement under “General Conditions” that the Sponsor (WCTU) “keep accurate and timely accounting records of all funds disbursed under the Agreement to ensure that charged expenditures are for eligible purposes and that documentation is readily available to verify that such charges are accurate.” There were also “Special Provisions” in the Agreement governing the conditions under which the Department would pay WCTU for the project’s actual expenses. The conditions included:

- Financial statements for payment for work including, in detail, the various items of costs incurred.
- A final report and complete expenditures records outlining the completion status for each work element.

OSI reviewed records related to the project’s construction costs. They included a breakdown of construction costs estimates prepared by Skelly & Loy, Inc. Costs were broken out by task, taking into consideration equipment and man hours for each task. Skelly & Loy, Inc. prepared a final analysis of costs based on its estimates and information on invoices submitted by the construction contractor. The figures on the construction contractor’s invoices were categorized by hours and other costs for given time periods. They are not based on the project task categories used by Skelly & Loy, Inc. Thus, the costs on the invoices cannot be compared to the estimated costs and the actual project costs cannot be verified. As

a result, it cannot be determined whether all of the charged expenses are for eligible purposes, as required in the Agreement. The cost items are not detailed adequately and completely.

There is no evidence that the construction contractor intended to submit inadequate reports or to impede a review of actual costs. There is no record that the contractor was given any instructions concerning record keeping and reporting procedures. With the possible exception of the invoice discussed below, no evidence was found of specific questionable charges to the grant.

The project site consisted of about 150 heavily wooded acres. The project cost estimate included \$2,500 for “clearing and grubbing.”⁷ E.M. Brown, Inc. submitted an invoice to WCTU for the costs of preparing timber at the project site “to a marketable condition beyond that required to dispose of these materials as part of the clearing and grubbing operations.”⁸ According to E.M. Brown, Inc.’s records, the costs on the invoice were deducted from the proceeds of the sale of the timber and the balance was sent to WCTU. No proceeds from the sale of the timber were paid to DEP. No grant funds were used directly to pay for the invoiced cost of preparation of the timber.

However, the costs on construction invoices submitted by E.M. Brown, Inc. as part of clearing and grubbing work on the project were charged to grant funds. The invoices are for most of the same time period as that in which the timbering work was done. It appears that the same equipment was used for both activities. The lack of specificity in the invoices prevents any differentiation or identification of the portion of the costs that could be properly charged to the grant. Thus, it is possible that grant funds were used to pay for costs of clearing and grubbing work and timbering work.

The DEP project advisor was aware that timbering had occurred but was not aware of the separate timbering invoice or the payment by E.M. Brown, Inc. to WCTU of a portion of the money from sales of the timber. According to WCTU, the money it received from E.M. Brown, Inc. was placed in an escrow account intended to be used for purchase of the Project site.

⁷ “Clearing and grubbing” is the removal of vegetation and debris from the site for disposal.

⁸ This work, known as “timbering” refers to the process of cutting trees large enough to produce useful lumber, removal of branches, piling and transport. Timbering normally occurs prior to clearing and grubbing.

Conclusions and Recommendations

DEP should establish procedures to ensure that grant applications and approval documents for this Program are complete and contain all of the required information before giving final approval to any project.

When grant funds are to be used to pay for subcontracts awarded without competitive bidding, DEP should require grant recipients to submit copies of the subcontracts and documentation showing the justification for selection of the subcontractors. This should be done prior to the release of state funds to pay for the costs of subcontracts. DEP should also ensure that all invoices submitted by subcontractors specify actual project costs by project cost categories in accordance with the terms of the project agreement.

In regard to this grant, DEP should require WCTU and its subcontractors to review and resubmit invoices. DEP should then make a determination of whether any state funds were spent improperly or improperly acquired or disposed of, especially in connection with the timbering activities at the site. The Act prohibits grant recipients from disposing of or converting property acquired with a grant for purposes other than those approved in the project application without prior written approval by the agency (DEP).⁹ The project agreement between DEP and WCTU also contains a condition with the same language.

⁹ 27 Pa. C.S.A. § 6106(a).

DEP's Response to Finding No. 1

DEP disagrees with the conclusion that the subcontractor was not approved in advance. On August 1, 2000, WCTU held a meeting and voted to hire E.M. Brown, Inc. to purchase supplies and materials and to provide standard, commercially available construction services. This vote was conducted in accordance with the group's rules and procedures. The DEP Project Advisor was present at the meeting and thus was notified of the intent to hire the contractor. The Project Advisor knew that E.M. Brown, Inc. was an approved contractor due to existing Bureau of Abandoned Mine Reclamation projects, and approved the hiring.

DEP concurs with the lack of adequate documentation on selection of the subcontractor. DEP now requires written requests and approvals, and performs official Contractor Responsibility Program checks before approving subcontractors.

DEP concurs that the project costs do not precisely match the engineer's estimates, but does not agree that the actual costs cannot be verified. DEP required the contractor to provide a detailed As-Built Plan Map of the site to ensure that appropriate material was delivered and that the appropriate amount of earth moving was accomplished. The documentation submitted by the contractor clearly showed that the volume of completed earth moving exceeded the amount offered in the application. The contractor accomplished this for less than the cost for construction in the proposed budget. DEP inspected the site numerous times during construction, and is confident that the invoices submitted for reimbursement represented work completed as part of the project.

DEP concurs that requests for reimbursement inadequately segregated project costs from costs associated with timbering. DEP will require that WCTU resubmit invoices to document adequate segregation of costs if possible, or will use fair market value calculations to ensure that Commonwealth funds have not been used for private profit.

The Department of the Auditor General's Comments

Overall, DEP's response concurred with the recommendations of the special audit's Finding No. 1. The current procedures and new requirements mentioned in DEP's response should, if implemented fully and consistently, address our concerns.

We question DEP's statement in the response that there was tacit or implicit DEP approval of the project's construction subcontract. The presence of a DEP official at a meeting during which WCTU members voted to hire the subcontractor does not constitute approval in advance by DEP within any reasonable interpretation of that term. There is no evidence that the DEP official reviewed the agreement or was even aware of its terms prior to the WCTU meeting.

Furthermore, we were given no information by DEP to assess whether the subcontractor's participation in prior DEP mine reclamation projects is a reasonable basis to approve this particular construction subcontract.

Our disagreement with DEP on this issue is also based on another fact presented in the report and noted by DEP in its response: There was no written agreement between WCTU and the construction subcontractor. The language of the grant agreement requires that the subcontract itself be approved, not just that the subcontractor be on a list of DEP-approved contractors.

Finding No. 2 – DEP failed to prevent the development of apparent conflicts of interest in connection with the role of DEP employees involved in the grant project.

A professional engineer employed in DEP's Bureau of Mining and Reclamation was a member of WCTU. While employed by DEP, he assisted WCTU in the collection of data, such as flow rates, water temperature and alkalinity/acidity, in connection with the Chiller Seeps project. The employee signed the April 10, 2000, project agreement between DEP and WCTU as a witness for DEP.

There is no documentation in DEP's files concerning whether the employee's participation in project work for WCTU was reported to DEP or considered as a possible conflict of interest. The employee was interviewed by OSI and stated that he did not believe that his membership in WCTU created any conflicts. In the interview, he noted that WCTU is an organization composed of volunteers.

The individual retired from DEP in September 2000 and was hired by Skelly & Loy, Inc., WCTU's consultant on the project, as a paid "associate consultant." He rendered services to Skelly & Loy, Inc., in connection with the project funded through Grant ME #359837. The services included providing tabulated data and charts. WCTU was charged for the associate consultant's time by Skelly & Loy, Inc. and the services were paid for with grant funds. The payments, totaling \$853.33, were included as "direct costs by others" in invoices from Skelly & Loy, Inc., dated December 11, 2000, and February 14, 2001.

OSI found no documentation or other evidence that the appropriateness of the individual's services on the project was raised or questioned by DEP or any other party. The individual did not appear to be aware of any potential conflict of interest.

Another DEP official who participated in the process by which WCTU's project was selected, and who also was a scorer of the application as part of the review process, attends regular meetings of WCTU as part of his official duties. A member of the DEP official's immediate family was a founding member of WCTU. At the time the WCTU grant application was selected, DEP had no specific policies and procedures in place to require disclosure of such memberships or interests or to otherwise prevent possible conflicts of interest on the part of its employees.

Another questionable incident concerning the involvement of DEP employees in the grant application was also noted: The February 7, 2000, grant application submitted by WCTU contained a letter of support from an official in DEP's Bureau of Abandoned Mine Reclamation. The official was the supervisor of one of the DEP employees selected to serve as a scorer as part of DEP's review of the application.

DEP itself was listed as a "partner" in WCTU's application for the project. DEP was, therefore, in the position of reviewing and grading a proposal it supported as a "partner."

While the special audit was underway, DEP prepared a draft of a document entitled "Conflict of Interest Policy for Employees Involved In Grant Review." The draft policy contains guidelines defining the employee's level of involvement with the organization and circumstances when a conflict of interest will be present pertaining to employment with DEP and membership with an organization applying for a grant. The draft policy also defined individuals subject to the policy, the situations that would preclude them from participating in the review process and the requirements for recusals.

In connection with DEP's response to the draft special audit report, DEP informed the Department that it had adopted a conflict of interest procedure on December 11, 2001. The new procedure essentially contains the guidelines of the draft policy. The statement of policy in the procedure states that "being a member of an organization that is a grant applicant is not a conflict of interest per se but can easily lead to either real or appearance of conflict of interest if the preceding guidelines are not followed rigorously."

Conclusions and Recommendations

The Pennsylvania Public Official and Employee Ethics Law (The Ethics Act) prohibits public officials and public employees from engaging in conduct that constitutes a conflict of interest, defines categories of prohibited and/or regulated conduct and contains disclosure requirements.¹⁰ Certain requirements also apply to former public officials/employees.¹¹

The Governor's Code of Conduct prohibits employees of the Executive Branch of the Commonwealth from representing or acting as an agent for a private interest, whether for compensation or not, in a transaction in which the state has a

¹⁰ 65 Pa. C.S.A. § 1101, et seq.

¹¹ Former public employees are prohibited from representing an organization or group for compensation on any matter before the government body with which the former public employee has been associated for one year after leaving the government body. 65 Pa. C.S.A. § 1103(g).

direct and substantial interest and which could be “reasonably expected to result in a conflict” between the employee’s private interest and his official responsibility.¹² The Governor’s Code of Conduct also contains approval requirements for private employment or rendering services for a private interest.¹³

DEP did not appear to consider conflict of interest questions concerning the activities of its employees in connection with the grant application and the project.

DEP did not have policies and procedures in place to ensure that the grant selection process was, in both fact and appearance, free from conflicts of interest arising out of relationships between DEP’s staff and WCTU. DEP took steps to institute such procedures only after the beginning of this audit and adopted the procedures after it received the draft of the audit report.

DEP should ensure that its staff has appropriate guidance concerning ethical requirements, potential conflicts of interest and the avoidance of situations where there could be improper influence over actions and decisions of scorers and other Department employees who review grant applications.

¹² Executive Order No. 1980-18, as amended. 4 Pa. Code § 7.171 et seq. (January 2001).

¹³ 4 Pa. Code § 7.156.

DEP's Response to Finding No. 2

DEP concurs that an appearance of conflict of interest developed and that Conflict of Interest procedures were inadequate in the first year of Growing Greener. We contend that no actual conflict of interest occurred.

Invoices submitted to the grantee from Skelly & Loy, Inc. and in turn to DEP from the Grantee made no reference to paid services of the former DEP employee. DEP contends that these services appear to constitute professional expertise and do not constitute representing or acting as an agent for Skelly & Loy. As stated earlier, DEP has now adopted Conflict of Interest procedures.

DEP requires various employees to keep abreast of activities of local organizations involved in watershed restoration as part of their official duties. We consider that knowledge of, and support for, such organizations is an essential part of their job and do not consider it a conflict of interest per se.

A third "questionable incident" relates to the grantee's efforts to make applications appear as though pre-supported by DEP. DEP considers it inappropriate for DEP officials to provide letters of support to applicants. Furthermore, out workshops on "how-to-apply" urge applicants to include only letters from partners who are actually participating in performing the grant.

Department of the Auditor General's Comments

DEP appears to have responded adequately to the need to have a conflict of interest policy and procedure.

During the special audit, a representative of Skelly & Loy, Inc. told auditors/investigators that work performed by the former DEP employee was listed on the invoices to WCTU as "direct costs by others". Our review of invoices submitted to DEP by WCTU included the category "direct costs by others," which consisted of \$853.33 shown on two separate invoices from Skelly & Loy, Inc., as stated in Finding No. 2 of the special audit report (p. 15). The Skelly & Loy, Inc. invoice dated December 11, 2000, had a cover letter attached to it which named the former DEP employee and stated that the invoice included work completed by the individual as "Associate Consultant." We obtained the cover letter from the DEP Project Advisor's files at the DEP Hawk Run Office.

Whether the former DEP employee's services constituted a violation of the Ethics Act is a question to be resolved by the State Ethics Commission. It may also be prudent for DEP to seek the advice of the State Ethics Commission on the

proper roles and relationships of DEP staff in the management of the Growing Greener Program.

Finding No. 3 – DEP selected this project to be awarded a grant before completing the review and selection process that was instituted for Growing Greener Program grants.

The grant to WCTU was among a group of Growing Greener Project grant awards announced in March 2000. According to the Director of DEP's Grant Center, DEP had no specific policies and procedures in place for the recently-enacted program at that time. According to a DEP official, DEP wanted to respond quickly after the Act was passed. DEP was aware of WCTU's interest and the Chiller Seeps project had been under consideration or "in the works" for some time. According to a DEP staff member, the project was recommended by DEP staff and included to be awarded without completing a formal review process as part of the "100 Days of Growing Greener" initiative.

According to DEP officials, projects were selected for grant awards pursuant to a selection process. The process required a specific written application detailing the proposed project's goals and objectives, a budget and letters of support, followed by a review procedure within DEP. DEP developed a procedure in which the applications were reviewed and scored by several DEP employees on the basis of agreed-upon factors and then returned to the DEP Grant Center for compilation of the scores and final selection.

WCTU's application, dated February 7, 2000, was being reviewed by DEP's staff as part of the above process when DEP announced that WCTU had been selected to receive one of the grants in the March 3, 2000, press release. The application process had not been completed. A DEP employee assigned as one of the principal scorers had just returned from a site visit to Chiller Seeps as part of his review work when he learned that the grant for the project had been awarded in the March 3, 2000, press release.

Conclusions and Recommendations

There is no evidence to suggest that the proposal was not an appropriate one to include in the Program. There is also no basis to conclude that any other applications were denied or delayed due to the approval of this one. However, given the fact that DEP's review and selection process was in place and functioning when the WCTU was awarded the grant, the announcement of the selection before the review had been completed was questionable.

DEP should follow its policies, procedures and guidelines for review, scoring and awarding grants in all cases to ensure that the process is fair, reasonable and documented adequately.

DEP's Response to Finding No. 3

DEP concurs that the scoring process was not well documented, but does not agree that the project was awarded outside our review and selection process. DEP has researched dates on scoring sheets for this first year selection and have not found them. The date of scoring is now documented in the database, so the technical scoring process can be tracked. The procedures early in the Growing Greener program were less systematic and have developed in subsequent years. While we cannot provide documentation that all technical reviews were completed before selection for this project, it is clear that some technical reviews were completed and that this project was known to DEP as a worthwhile restoration effort. DEP now ensures that no award decisions are made before technical review is completed.

The Department of the Auditor General's Comments

We agree with DEP that some of the technical reviews of the application may have been completed prior to the selection and that the project appears to have been an appropriate one to include in the Program. The essence of the finding is that the reviewing process had not been completed when the selection was made and announced.

DEP's assurances that reviews are now completed before grants are awarded and that dates of scoring are recorded in a database should be helpful to future audits and oversight of the Growing Greener Program.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION'S
GROWING GREENER GRANT ME # 359837
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