



**New Jersey State Legislature
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**Department of Labor and Workforce Development
Division of Workplace Standards**

July 1, 2012 to March 31, 2016

**Stephen M. Eells
State Auditor**

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Enclosed is our report on the audit of the Department of Labor and Workforce Development, Division of Workplace Standards for the period of July 1, 2012 to March 31, 2016. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
August 24, 2016

Table of Contents

Scope.....	1
Objectives	1
Methodology.....	1
Conclusions.....	2
Findings and Recommendations	
Internal Controls Over Revenue Processing.....	3
Wage and Hour Compliance.....	4
Abandoned Wages	5
Debt Collection.....	5
Unpaid Payroll Taxes.....	6
Logical Access	7
Lack of Identification, Authentication, and Audit Trails.....	7
Excessive User Access Privileges.....	8
Untimely Removal of Access Privileges	8
System Documentation and Risk Assessments.....	9
Observations	
Inadequate Information Systems.....	10
Certification Requirement for Asbestos Inspectors and Consultants	11
Auditee Response.....	12

Scope

We have completed an audit of the Department of Labor and Workforce Development, Division of Workplace Standards for the period July 1, 2012 to March 31, 2016. The Division of Workplace Standards (division) is comprised of Wage and Hour Compliance and Public Safety and Occupational Safety and Health (PSOSH). PSOSH includes the Asbestos Control and Licensing, Safety Compliance, and Boiler and Pressure Vessel Compliance units. The mission of the division is to enforce laws that provide employees safe and equitable working conditions, protect good faith employers from unfair competition, and protect workers and the general public from hazardous workplace practices. The division performs inspections, certifies operators and businesses working in dangerous environments or with hazardous materials, provides occupational safety training, and imposes penalties for violations.

Our audit included financial activities accounted for in the state's General Fund, Wage and Hour Trust Fund, and Worker and Community Right to Know Fund. During fiscal years 2013 through 2015, annual revenues averaged \$22.1 million primarily from Boiler and Pressure Vessel Compliance inspection and licensing fees, Wage and Hour Compliance fees and penalties, and Public Works Contractor Registration fees. In addition, collections of unpaid wages on behalf of employees averaged \$1.7 million annually. We did not audit expenditures which averaged \$19.8 million annually during this period. Payroll represented 93 percent of these expenditures.

We also evaluated select general and business process application controls over the information systems utilized by the division.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the division's programs, were reasonable, and were recorded properly in the accounting systems. We also evaluated the adequacy of general and business process application controls over the information systems for logical access, security management, change management, and contingency planning.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. 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.

In preparation for our testing, we studied legislation, the administrative code, circular letters promulgated by the Department of the Treasury, and policies of the department. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and through testing of financial transactions. We also read the budget messages, reviewed financial trends, and interviewed department personnel to obtain an understanding of the programs and the internal controls. Additional guidance was provided by the Federal Information Systems Controls Audit Manual (FISCAM) issued by the United States Government Accountability Office.

Nonstatistical and statistical sampling approaches were used. Our samples of financial transactions were designed to provide conclusions on our audit objectives, as well as internal controls and compliance.

Conclusions

We found the financial transactions included in our testing were related to the division's programs and were reasonable. In making this determination, we noted significant weaknesses in internal controls over revenue collection and recognition resulting in revenue transactions not being recorded properly in the accounting systems. We also found various general and business process application controls over information systems to be inadequate. In addition, compliance issues meriting management's attention were found in the collection and distribution of wages owed to employees through the enforcement of labor laws.

We also made observations concerning the adequacy of information systems and the certification requirement for asbestos inspectors and consultants.

Internal Controls Over Revenue Processing

Internal controls over revenue collection and recognition need to be strengthened.

The Division of Workplace Standards is comprised of Wage and Hour Compliance (WHC) and Public Safety and Occupational Safety and Health (PSOSH). PSOSH includes the Asbestos Control and Licensing (ACL), Safety Compliance (SC), and Boiler and Pressure Vessel Compliance (BPVC) units. The division generates revenue from inspections, asbestos work notification fees, licensing, issuance of registrations, permits, certificates, and other fees and penalties.

WHC and the PSOSH units each collect revenue, process it, and forward it to Finance and Accounting (FA), which deposits revenue and records it in the New Jersey Comprehensive Financial System (NJCFIS).

We noted the following internal control weaknesses.

Revenue is not deposited timely.

The Department of the Treasury Circular Letter 12-02-OMB requires all funds to be deposited on the same day as received. Fifteen of 34 randomly selected transactions, totaling \$214,741 of \$338,084, were deposited three or more days after receipt. Failure to deposit revenue in a timely manner increases the risk of lost or stolen checks.

Checks are not properly safeguarded.

Checks are not properly safeguarded by the BPVC and SC units. The BPVC unit secures checks overnight, however, during the day they are located in a large common area accessible to employees, including temporary employees. The SC unit stores checks in an unlocked drawer. Both units may take several days to process the receipts and remit them to FA for deposit. In addition, the SC unit does not restrictively endorse checks when received. Failure to properly safeguard checks increases the risk of them being lost or stolen.

Duties are not adequately segregated.

Two employees in the SC unit with access to checks are responsible for maintaining databases, recording receipts, and issuing licenses, permits, and registrations. Proper segregation of duties is necessary to ensure that no single person is in a position to both perpetrate and conceal errors or fraud.

Transactions are not recorded in a timely manner.

Of the 4,517 revenue transactions recorded in NJCFIS from July 1, 2012 to August 26, 2015, 3,051 transactions were recorded four or more days after deposit. FA took an average of 11 days to record receipts in the NJCFIS after deposit. As a result, 274 transactions totaling \$3.8

million were recorded in the NJCFS in the incorrect fiscal year. Failure to record revenue transactions in the proper fiscal year leads to erroneous financial reporting and reconciliation difficulties.

Periodic reconciliations are not performed.

We compared revenue recorded in the NJCFS to the revenue reported by individual units. Our reconciliation disclosed differences greater than five percent in each fiscal year of our audit period. BPVC inspection revenue per the NJCFS for the fiscal year ending June 30, 2013, exceeded the amount reported by the BPVC unit by \$1.1 million.

Each month, FA receives revenue reports from PSOSH and WHC, however, differences between these reports and the NJCFS are not investigated. FA personnel stated the differences are caused by a delay between the revenue being processed by a unit and FA recording the transaction in the NJCFS. Our reconciliation accounted for these delays, yet differences over five percent remained.

Failure to perform reconciliations increases the risk of misappropriation of assets and erroneous financial reporting. Periodic reconciliations of revenue processed to revenue recorded in the NJCFS would improve internal controls.

Recommendation

We recommend receipts be delivered directly to FA. Management should establish and implement internal controls to ensure that revenue is deposited and recorded timely and accurately. Management should also develop and implement periodic reconciliation procedures to ensure NJCFS and unit database records are in agreement.



Wage and Hour Compliance

Wage and Hour Compliance (WHC) enforces a wide variety of labor laws and regulations. These include the minimum wage law, overtime wage rates, rules for the employment of minors, and the Prevailing Wage Act which applies to most publicly-funded construction projects.

WHC investigates wage complaints and assesses additional wages due to employees, along with fees and penalties. Wages due to current employees are paid through the employers' payroll, while wages due to former employees are paid through payroll or forwarded to WHC for distribution. WHC collects an average of \$1.7 million on behalf of employees each year and distributes an average of \$1.4 million (82 percent). These wages are accounted for in the Wage and Hour Trust Fund (Fund).

Abandoned Wages

Wage and Hour Compliance failed to forward \$5.1 million of abandoned wages to the Unclaimed Property Administration.

Pursuant to the Uniform Unclaimed Property Act, wages which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned. Wages that remain unclaimed in the Fund for twelve months as of June 30th should be reported and transferred to the Department of the Treasury, Unclaimed Property Administration (UPA) by November 1st of that year.

The prime responsibility of the UPA is to return abandoned or lost tangible and intangible property to its rightful owners or heirs. To achieve this, the UPA utilizes a third-party website with national exposure to advertise abandoned properties.

When WHC is not able to locate employees who are owed wages using available contact information, the wages remain in the Fund. We found that WHC does not forward abandoned wages to the UPA. The wider reach of the UPA would allow more individuals to claim their abandoned wages.

During the ten years preceding June 30, 2015, the Fund's balance increased 75 percent to \$5.7 million, of which only \$555,000 should remain in the Fund. This amount represents the undisbursed portion of the prior year's receipts and outstanding checks. The remaining \$5.1 million should have been submitted to the UPA by November 1, 2015.

Recommendation

WHC should forward \$5.1 million to the UPA immediately and transfer abandoned wages to the UPA on an annual basis.

Debt Collection

Wage and Hour Compliance failed to refer \$55.7 million of outstanding amounts to the Division of Revenue and Enterprise Services (DORES) for collection.

WHC collects approximately 58 percent of the amounts assessed for unpaid wages, fees, and penalties. If assessments are not paid, a docketed judgment is filed with the Superior Court of New Jersey against the employer, and in some cases the owners, for any unpaid amounts. WHC is required to refer all docketed cases to DORES for collection pursuant to Department of the Treasury Circular Letter 13-11-OMB. DORES provides assistance to all state agencies in the recovery and resolution of non-tax debt.

From July 1, 2006 to December 31, 2015, WHC obtained 8,211 docketed judgments totaling \$93.9 million. Of this amount, \$16.1 million was referred to DORES for collection of which \$436,000 was recovered. As of December 31, 2015, \$55.7 million from docketed cases was still

outstanding according to WHC records. Assuming the same collection rate, an additional \$1.5 million in unpaid wages, fees, and penalties could be collected if the remaining \$55.7 million is referred to DORES.

WHC management does not have a consolidated review process to ensure that all cases are resolved timely. WHC investigations result in assessments for approximately 6,800 new cases annually. While the current workload of WHC, as of January 1, 2016, consisted of only 1,463 cases, we found 503 of these cases were assessed prior to January 1, 2013. A cursory review of five of these cases disclosed one for which a judgment should have been filed but was not, two cases with unreconciled amounts that require additional work, and two cases that were last updated prior to July 25, 2012.

Periodic management reviews are necessary to ensure that unpaid wage claims are addressed, resolved timely, and referred for collection if appropriate.

Recommendation

WHC should report unpaid wages, fees, and penalties to DORES for collection in compliance with the circular letter and establish a process that will ensure all cases are resolved in a timely manner.

Unpaid Payroll Taxes

Wage and Hour Compliance accepts wage receipts on a pre-tax basis resulting in unpaid payroll taxes.

Employers must withhold, report, and pay employer and employee shares of Social Security, Medicare, and income taxes. New Jersey employers are also required to withhold contributions for the Workforce Development Partnership Fund and the Unemployment, Disability, and Family Leave Insurances.

WHC assesses additional wages due to employees and instructs employers to deduct payroll taxes and remit net wages payable. Wages can be remitted directly to employees or to the Commissioner of Labor and Workforce Development for distribution.

While the WHC initial assessment letter instructs employers to submit all wages net of payroll tax deductions, subsequent correspondence regarding settlements, payment schedules, and judgments does not address these deductions. Although WHC lacks the authority to withhold payroll taxes, they do not reject gross receipts. As a result, WHC distributes gross wages to employees.

Between July 1, 2012 and December 31, 2015, WHC received checks payable to the Commissioner of Labor and Workforce Development totaling \$5.5 million in wages for distribution to employees. Of these wages, we reviewed larger amounts totaling \$862,000 and statistically sampled the remaining \$4.6 million to determine whether payroll taxes were

withheld. We found no payroll taxes were withheld. As a result, we estimate up to \$764,000 in Social Security and Medicare taxes went unpaid.

We also estimate up to \$5 million in wages may have avoided income tax at the federal and state levels. When the employer submits unpaid wages but neglects to withhold payroll taxes, it puts the responsibility on the employees to include the wages on their annual income tax returns. Although WHC designates the amounts as “gross wages”, the employees may erroneously assume the amounts are included in their Wage and Tax Statement (Form W-2) and unknowingly omit the wages on their income tax return.

Recommendation

WHC should instruct employers, through all correspondence, to remit wages net of payroll taxes and to remit the corresponding employer taxes and withheld amounts to the appropriate authorities.



Logical Access

The Division of Workplace Standards does not have adequate logical access controls in place over their information systems.

The division utilizes the following five information systems to achieve its business objectives: Asbestos Control and Licensing (ACL), Safety Compliance (SC), Boiler and Pressure Vessel Compliance (BPVC), Jurisdiction Online (JOL), and the Wage and Hour Automated Tracking System (WHATS). These information systems contain critical system data necessary to support the daily operations of each unit. This data contains personally identifiable information, records for asbestos licensing and permits, boiler and pressure vessel inspections and violations, and wage compliance data.

We reviewed select general and business process application controls as they relate to logical access and noted the following deficiencies.

Lack of Identification, Authentication, and Audit Trails

Management does not have mechanisms in place to identify and authenticate each user for the ACL, SC, and BPVC information systems. Identification is the process of distinguishing one user from all others, typically through user IDs. Authentication is the process of establishing the validity of a user’s identity, typically through passwords.

The lack of a unique user ID and password for each user results in the inability to generate audit trails. Adequate audit trails include logs or reports that identify who initiated the transaction, the date and time of the transaction, and the location of the transaction’s origin.

The lack of identification, authentication, and audit trails increases the risk of unauthorized access as well as unauthorized modifications to critical system data.

Excessive User Access Privileges

For the ACL, SC, and BPVC information systems, there are no access controls in place to limit user access privileges. All users with access to these systems can read, modify, and delete all data. For access controls to be effective, user privileges should be limited to access necessary to fulfill employee job responsibilities, based on job title and function.

For the JOL information system, we identified an excessive number of users (13 of 40) with Administrator access. These 13 users are able to add or delete other users, and assign and update access privileges for other users. These abilities also allow the users to access and make changes to all data stored in the information system. Administrator access should be limited to management and the department's Division of Information Technology. Even more disconcerting, we determined 91 users with Data Entry Clerk access had access privileges similar to those of an Administrator. We informed the BPVC unit of the inappropriate system access and the privileges were modified.

Failure to align system access with user job functions may lead to unauthorized use of system data and resources.

Untimely Removal of Access Privileges

User access to the JOL system is not disabled timely upon separation of employment. Working with management, we identified 64 active accounts for users that had separated from employment. User access remained active an average of 864 days after separation for the 17 users we were able to test. Access for one user account remained active for 2,357 days after the employment ended. We also identified one user account that was accessed after employment ended. The JOL system is web-based and an authorized user may access the system from an external location. Management was not able to identify what changes, if any, were made to system data.

Failure to terminate user access timely resulted in unauthorized access to system data.

Recommendation

The division should implement identification and authentication access controls to prevent and detect unauthorized access to the information systems. Audit trails should be generated during data processing. System access should be commensurate with user job functions, individually assigned, continuously maintained, and removed timely.



System Documentation and Risk Assessments

The Division of Workplace Standards does not have adequate documentation or perform periodic risk assessments of the information systems.

The division does not have adequate documentation for general controls over the Asbestos Control and Licensing (ACL), Safety Compliance (SC), Boiler and Pressure Vessel Compliance (BPVC), Jurisdiction Online (JOL), and Wage and Hour Automated Tracking System (WHATS) information systems. These controls include security management, change management, and contingency planning. In addition, risk assessments are not performed or documented for each information system.

The systems are lacking documentation of an overall security management program outlining individual security plans. Industry standards and best practices require agencies to develop, document, and implement an overall security management program and individual security plans specific to each information system. The lack of proper documentation could contribute to inadequate security controls and compromise data integrity.

Risk assessments are not periodically performed or documented for each information system. Industry standards and best practices require agencies to periodically assess the risks for each information system that may prevent the agency from meeting its objectives. Risks related to unauthorized access, use, disclosure, disruption, modification, or destruction of data within the information system should be evaluated. Risk assessments are necessary to ensure threats and vulnerabilities are identified, addressed, and mitigated through security controls.

The WHATS and JOL information systems are lacking documentation of policies and procedures over change management. Industry standards and best practices require agencies to develop, document, and implement policies and procedures to ensure all changes to information resources are properly authorized, tested, approved, and tracked. Without effective policies and procedures in place, the information systems may not be configured properly or operate securely.

In the event of a disaster, there is no comprehensive contingency plan for restoring critical information system resources for any of the five systems. Industry standards and best practices require agencies to develop, document, and communicate to all staff an up-to-date contingency plan for the recovery of critical system data and resources in the event of a disaster. The contingency plan should identify critical data and resources, include detailed instructions for restoring operations, identify the alternate processing facility and backup storage facility, and clearly identify personnel responsible for appropriate recovery. Without a contingency plan in place, there is an increased risk that data, operations, and system resources could be adversely impacted.

Recommendation

The division should develop, document, and implement an overall security management program, and policies and procedures over change management. In addition, management should perform periodic risk assessments and develop, document, and communicate to all staff an up-to-date contingency plan.



Observations

Inadequate Information Systems

Our review of select general and business process application controls over the information systems noted poor logical access controls and lack of system documentation. According to a Logical System Architecture Review document submitted by the Department of Labor and Workforce Development to the Department of the Treasury, Office of Information Technology, the current information systems are inadequate and insufficient in achieving the organizational objectives of the units.

The Asbestos Control and Licensing unit, for example, uses a Paradox Database Management System from 1984 to account for licenses, permits, and violations. Management stated that only one individual in the Division of Information Technology has the knowledge and ability to operate the system and restore information in the event of a system crash.

Currently, the Division of Workplace Standards has issued a Request for Quotation (RFQ) for the Electronic License and Inspection Tracking System (eLITS) to replace the Asbestos Control and Licensing, Safety Compliance, Boiler and Pressure Vessel Compliance, and Jurisdiction Online information systems. Included in the RFQ are provisions for detailed system documentation such as a security program, security plan, configuration management program, disaster recovery plan, risk management plan, role-based security access, password management, logging and auditing controls, and data integrity controls. Through a single application that utilizes a common interface and business specific features, the new system is expected to provide an efficient and effective means to support the operational requirements of the division.

Acquiring a new integrated information system is often costly, as is revamping a number of antiquated databases. However, failure to mitigate the risks of business interruptions and loss of essential data by the division may affect public safety due to the unique services the division provides.

Certification Requirement for Asbestos Inspectors and Consultants

In the interest of protecting public health and safety, the Asbestos Control and Licensing Act requires asbestos abatement be performed by certified companies and individuals. The Asbestos Control and Licensing (ACL) unit verifies that individuals have successfully completed required training and written examinations. Applicant companies have to demonstrate competence, knowledge, and ability to perform asbestos abatement work safely in order to be granted approval as a licensee. In addition, any educational facility or public building that undergoes an asbestos abatement must be monitored by an authorized Asbestos Safety Control Monitoring firm and obtain a permit from the administrative authority having jurisdictions on that project as required by the federal Asbestos Hazard Emergency Response Act. However, New Jersey does not have licensing or certification requirements for individuals or companies performing inspections or consulting on industrial and residential properties.

The risk to public health is heightened since an unlicensed individual may fail to identify asbestos during an inspection. Consequently, the owner through no fault of their own may fail to hire a qualified, certified abatement contractor. ACL has no authority over inspectors or consultants that are not also certified asbestos abatement companies. As a result, even when such projects are identified, ACL has neither means to penalize the party at fault nor ways to prevent the inspector or consultant from working on new projects.

Our review of policies for nine judgmentally selected states identified eight that require a certified asbestos inspector or consultant to be involved in all industrial projects and some residential projects.

State	State issued license or certification required for:
New York	All inspections except owner-occupied single family residence.
Massachusetts	Consulting for all projects if asbestos may be present.
Pennsylvania	Inspections and consulting except homeowner working on residential property.
California	Consulting for projects containing 100 square feet or more of asbestos containing materials.
Texas	All inspections except for residential building with four or less dwellings.
Virginia	Inspections and consulting except owner-occupied single family residence.
Florida	All inspections, consulting, and providing abatement specifications.
Connecticut	All inspections, project management, design and monitoring.
Maryland	No certification required to consult on asbestos projects.

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August 22, 2016

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Dear Mr. Eells:

Please accept this letter on behalf of the New Jersey Department of Labor and Workforce Development (LWD) in response to your Agency's draft report on the Division of Workplace Standards.

LWD's Response:

The Department continually welcomes reports that assist us in our efforts to improve operations for the public we serve. LWD takes the protection of taxpayer dollars seriously as we have proven with our efforts to protect the Unemployment Insurance Trust Fund from fraud and improper payments. The Department is in the process of implementing the recommended additional safeguards included in your draft report, beyond the strong safeguards we already have in place.

LWD's Office of Internal Audit (OIA) is reviewing your recommendations for additional internal controls to help strengthen the Division's internal processes. The office will be completing this review in 90 days and meeting with the proper staff to discuss the implementation of these additional recommendations.

The Department's Division of Finance and Accounting is currently reviewing the amount of abandoned wages, listed as an estimation in your report, in conjunction with the Office of Internal Audit to determine the amount for transfer to the Unclaimed Property Administration. Once this review is completed, the funds will be transferred to the Unclaimed Property Administration (UPA). As discussed with your staff, starting on November 1st of this year and on a yearly basis going forward, we will transmit to UPA, by November 1, any wages unclaimed for more than one year.

The Division of Wage and Hour Compliance's (WHC) current process for collecting back wages owed to employees is comprehensive and extensive. To supplement these efforts, WHC will enhance its practice of transmitting docketed cases to DORES for collection. WHC's current multi-step process includes time and payroll inspection to determine violations, assessment letters sent detailing wages owed with fees based on gross wages due and assessed penalties for violations of statutes. If no response is received, a Final Order is issued; if no response is given, a Judgment Advisory letter is sent; and if no further response is received, the matter is then sent for docketing to Superior Court. Once a case is docketed, a Notice of Docketed Judgment is mailed to the employer with all the docketing information. The docketed cases are then reviewed to rule out bankruptcy, payment plans that are in compliance, and requests for appeal. Starting within 45 days, eligible cases with a docket date 45-90 days old will be transmitted to DORES on a monthly

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basis. This will give sufficient time for WHC to mail the Notice of Docketed Judgment to the employer and for the employer to submit payment.

WHC is reviewing all correspondence that request payment of wages to employers and ensuring that all contain the language reminding employers to remit net wages and that all contain the language reminding employers to remit the withholdings to the appropriate taxing authorities.

In the Division, we are continuing our efforts to update LWD legacy systems. The Division of Workplace Standards has selected a vendor, and the project kickoff meeting is scheduled in September for the Electronic License and Inspection Tracking System (eLITS) to replace legacy systems for Asbestos Control and Licensing, Safety Compliance, Boiler and Pressure Vessel Compliance, and Jurisdiction Online information systems. This new system addresses all of the recommendations outlined in your draft report and does not have the limitations faced by the current system. The Division currently has a process in place to request and test any changes in the Wage and Hour Automated Tracking System (WHATS). Over the next 30 days, staff will be documenting this contingency plan process.

The Department of Labor and Workforce Development works to ensure that we provide the best services possible to the public and protect taxpayer dollars. We thank you for your recommendations to help us to continue to achieve these goals.

If you have any questions, please contact Jerry Calamia, Director of Internal Audit at (609) 292-1885.

Sincerely,



Harold J. Wirths
Commissioner

C: Jerry Calamia
Gary Hasenbalg
Aaron Fichtner
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