

OFFICE OF INSPECTOR GENERAL ENVIRONMENT
INITIATIVE AND AUDIT PLAN FOR
ENERGY AND ENVIRONMENT, LABOR, AND PUBLIC
PROTECTION CABINETS
FISCAL YEAR 2009

I. INTRODUCTION

The Office of Inspector General (OIG) is pleased to present the Environment Initiative and Audit Plan, hereinafter "The Audit Plan" or "Plan," for the Energy and Environment, Labor, and Public Protection cabinets for Fiscal Year 2009. The Environmental Crime Referral Policy reemphasizes one of the OIG's original responsibilities. The proposed Audit Plan will address concerns and interests of elected officials, agency heads, and members of the Commonwealth at large. Officials and other stakeholders have emphasized their continued commitment to avoid risks that could trigger further budget deficits and management inefficiencies. The scheduling of audits on a regularly recurring basis will make greater use of the resources and training of OIG's three auditors. The Plan will maximize use of OIG's budget of \$680,000 for fiscal year 2009. The Plan will result in a savings to the cabinets.

A. Background and Authority

By Executive Order 99-413, issued 3/30/99, the OIG was established within the Office of the Secretary of the Natural Resources and Environmental Protection Cabinet. OIG was to be responsible for investigations of violations of environmental laws and regulations conducted pursuant to KRS 149 (Division of Forestry (DOF)); KRS 151 (Geology and Water Resources); KRS 224 (Natural Resources and Environmental

Protection Cabinet); and KRS 350 (Surface Coal Mining). OIG has had success with previous dumpsite initiatives and DOF arson investigations, which are described below.

There are no statutory mandates governing the conduct of OIG auditing and investigation activities other than KRS 224.10 – 025(3) and (4) which provide:

“The office shall:

- (a) Be responsible for investigating **alleged violations of environmental laws and administrative regulations (emphasis supplied);**
- (b) Coordinate and provide support for the Environmental and Public Protection Cabinet’s (EPPC) participation in investigations involving the cabinet, other Kentucky state agencies and agencies of other states and the federal government;”
- (c) Be responsible for administrative investigations necessary for the effective and efficient management of the cabinet.”

These responsibilities have been incorporated into the Memorandum of Agreement (MOA) Among Energy and Environment Cabinet, Labor Cabinet, and Public Protection Cabinet at paragraph 2, “OIG Shared Services: The Office of Inspector General for Shared Services shall perform the same statutory investigatory and auditing functions for the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet that its predecessor agency performed within the Environmental and Public Protection Cabinet.” (Effective June 16, 2008, pursuant to Executive Order 2008-507). It should be noted that reference to “auditing functions” appears for the first time in this MOA. It shall become important in the Audit Plan which follows at page seven.

B. The Mission Statement of the OIG

According to its revised Mission Statement, “The OIG is responsible for conducting administrative and criminal investigations involving the Labor, Public Protection, and Energy and Environment cabinets, including violations of environmental laws and other violations of state statutes and cabinet policies. The office provides quality audit services in an objective manner to ensure the cabinets’ operational integrity, accountability, efficiency, effectiveness, and to determine whether they are in compliance with the laws and regulations of the Commonwealth. The OIG strives to prevent, identify, and eliminate fraud, waste, abuse, and mismanagement. The OIG is dedicated to providing accurate and impartial investigative and audit support to cabinet management, intra-and inter-agency organizations, sister states, and federal authorities and to serving as a liaison with the law enforcement community.” In keeping with its mission, the OIG seeks to achieve a stream of work for its personnel in the absence of mandatory statutory and regulatory guidelines for the scheduling of audits and inspections. At the same time, OIG will continue to investigate and write reports on allegations concerning rules violations of cabinet policies and procedures as well as violations of law.

The Plan has been designed to concentrate on certain essential themes to help achieve the OIG mission. The Plan includes OIG initiatives for audit and inspection coverage focusing on areas presenting the highest risks to maintaining the cabinets’ fiscal integrity and continued financial strength. The three central themes of these audits and inspections are as follows: 1) efficient use of resources; 2) revenue enhancement; and 3) maximum use of OIG resources and personnel. These themes are consistent with Executive Order 2008-0011 serving as a “...directive to all Executive Branch Cabinets

and agencies to implement cost saving measures immediately to assist in closing the deficit faced by the Commonwealth in the current fiscal year.” (Portions of this introduction and other sections were borrowed from Charles J. Willoughby’s *Fiscal Year 2008 Audit and Inspection Plan of the Government of the District of Columbia Office of the Inspector General* with the permission of Inspector General Willoughby.)

II. ENVIRONMENT INITIATIVE

A. Reemphasis of Policy Statement on Environmental Crime Referral

The Plan reemphasizes that policy set out in Policy Statement #00-001 referred to as Policy Statement of Environmental Crime Referral, which was in use during James E. Bickford’s tenure as Secretary of the Natural Resources and Environmental Protection Cabinet, following the creation of OIG by Executive Order #99-413. According to this policy, the OIG is responsible for the investigation of environmental crimes. This policy has been revised and is attached as Policy Statement OIG #08-003, but should be referred to as a Policy Statement of the Energy and Environment Cabinet in the traditional format (Attachment #1). By reemphasizing the mandate in the form of a newly revised policy, OIG should have additional case referrals, which were contemplated at the time of its creation.

In order to further the role of OIG in environmental investigations, it is suggested that OIG staff meet with the Commissioner of the Department of Environmental Protection on a monthly basis. It may be a specially called meeting or it may be combined with the commissioner’s own staff meetings. If areas are determined to need investigation, OIG would recommend how its staff could help. Discussions are ongoing with Carl Campbell, Commissioner of the Department for Natural Resources,

regarding a partnership between OIG and the Office of Surface Mining to investigate illegal “wildcat” mining which is expected to be on the increase due to the increase in the price of coal.

B. History of the Environmental Initiative

1. Dumpsite Initiative

OIG has made a substantial impact on illegal dumping throughout Kentucky. Former Commissioner R. Bruce Scott recently attributed the decline in Kentucky’s illegal dumps to the following: 1) the Division of Waste Management’s (DWM) and OIG’s partnering in the dumpsite initiative, 2) education of the public about laws affecting illegal dumping, 3) money from the state funding local counties’ clean up efforts, and 4) the establishment of local solid waste coordinators. However, illegal dumping still occurs and should be aggressively investigated. As recently as August 26, 2008, OIG received a request for help from LaRue County Solid Waste Coordinator Jill Gray. The media continues to show interest in this problem. Videos and photographs are supplied to the media on a regular basis. Regional environmental enforcement associations have also expressed interest in the Kentucky initiative. OIG investigators have spoken at training meetings sponsored by the Southern Environmental Enforcement Network and by the Midwestern Environmental Enforcement Association.

Since 1999, surveillance cameras have been deployed at approximately one hundred forty-two (142) locations. One hundred seventy-nine (179) incidents of illegal activity were recorded involving one hundred eighty-three (183) individuals. Over eight thousand sixty-four (8,064) man hours have been expended since 2000 on this initiative. OIG has covered at least one hundred eight thousand four hundred and fifty-seven

(108,457) miles to deploy, maintain, investigate, and check on illegal dumpsites. Seventy-seven (77) private property dumps and one hundred seventy-six (176) roadside dumps have been identified by OIG investigators and referred to DWM for further action. Since the inception of the program, ninety-eight (98) video Notices of Violations have been issued. The cabinet ordered five hundred sixty (560) tons of trash to be removed and one hundred sixty-five thousand dollars (\$165,000) in civil penalties have been levied. Of this amount, seventy thousand eight hundred forty-six dollars (\$70,846) have been collected in penalties and two hundred seventy and nine tenths (270.9) tons of trash have been removed.

2. Fund of \$200,000 for Environmental Initiatives

In March of 1999, OIG and DWM received \$200,000 in a settlement negotiated by the United States Attorney's Office of the Western District of Kentucky with Ryan Foods, a dairy located in Murray, Kentucky (See Attachment #2). Ryan Foods knew that it was being investigated by OIG, DWM, and USAO and worked out an agreement whereby it would comply with the effluent limitations. It built its own on-site waste management plant. There was never an indictment in regard to this case, only an agreement not to prosecute if Ryan agreed to these conditions.

The fund for environmental initiatives is called the Resource Conservation and Recovery Fund (RCRF) as set out in KRS 224.10-650. With these funds, OIG purchased surveillance equipment for its dumpsite initiative (See above). RCRF is dedicated to environmental initiatives. There have been contributions to it over the years. In March 2008, Joe Swafford, the solid waste coordinator for Clay County, was convicted of submitting inflated bids for clean up of illegal dumps. Swafford entered an Alford plea to

one count of Misuse of Confidential Information (KRS 522.040) and was sentenced to two years subject to diversion under KRS 533.250 if he paid \$7500 in restitution to EPPC within three years. Other contributions to the fund have come from a person who destroyed one of OIG's surveillance cameras (\$1,092) and from Dale Greer who pled guilty to Criminal Littering (KRS 512.070). The latter was ordered to pay \$15,000 to EPPC, of which he has paid \$6,366 to OIG and \$8,634 to DWM.

3. Arson Investigations

In 2005, OIG investigated between twenty and thirty wildland arson leads referred by DOF. These investigations were conducted in Bell, Knox, Laurel, Harlan, Whitley, Clay, Letcher, and Perry counties. One of these investigations resulted in a jury trial of two individuals. Local authorities reported a decline in the number of arson-related wildland fires in the wake of the investigations. One of the OIG investigators is trained by the United States Department of Homeland Security in arson investigation and has attended firefighting training as well as training in wildland fire behavior. Two of the investigators were sworn in as deputy forest wardens under KRS 149.080.

III. THE AUDIT PLAN

A. Phase One Based upon Previous Inspection Program

Based upon the results of the Inspection Program conducted by OIG from 2004 through 2007, OIG has determined that vehicles and cell phones/Blackberries/landlines are at high risk for overspending. A representative sample of agencies has been chosen with which to start. Seven agencies will be audited during the first seven months of the plan. They will be Division of Oil and Gas Conservation and Division for Air Quality in the Energy and Environment Cabinet; Kentucky Horse Racing Commission, Department

of Financial Institutions, and the Department of Alcoholic Beverage Control in the Public Protection Cabinet; and the Security and Compliance Division in the Department of Worker's Claims and the Division of Occupational Safety and Health Compliance in the Department of Workplace Standards in the Labor Cabinet. These seven agencies will receive a survey that will be prepared by OIG six weeks in advance of the commencement date, which should be January 1, 2009. These agencies will have 10 days upon receipt to return the survey to OIG. This will insure the timely return and give OIG staff time to review and analyze the survey results before the audit begins.

B. Phase Two of the Plan Determined by Surveys

Assuming that the Plan is approved by the cabinets, the second cycle of audits will begin at the end of July 2009. These audits will be left to the requests of the various agencies and/or those determined by the survey results. These surveys will be mailed to all agencies beginning January 1, 2009 (Prototype of Survey at Attachment #3). This will insure their return and review by staff before the audit is to begin.

C. Distinction between Audit Plan and the Inspections Previously Accomplished

Beginning in late 2005, OIG conducted an Inspection Program over a three-year period. It was equally distributed among all EPPC agencies (now Energy and Environment, Public Protection, and Labor). The objectives of this program were to standardize policies and procedures among the agencies combined under EPPC as part of the reorganization during the administration of Governor Ernie Fletcher.

The focus of the Audit Plan will not be the uniformity of policies and procedures of what is now another newly reorganized cabinet. Instead, the emphasis of the audits will be on determining if state owned assets are being utilized in the most cost-effective manner. An

analysis will be done on how money can be saved. The Plan will involve in-depth audits in the two areas designated. There will be a follow-up by OIG for each audit performed. The results will be monitored. The OIG will meet on a weekly basis to determine what its auditors have discovered and what similarities are being noted among the audits. They will determine which agencies are operating at maximum cost effectiveness and which ones are not. It is anticipated that the Audit Plan will result in improved efficiency and savings to the cabinet and the Commonwealth.

During the previous Inspection Program, records show that plans for compliance were submitted following the inspection outbriefs. Neither the incentive program which recognized "Benchmark Programs" (exceptional and unique agency programs), nor a means of follow-up on compliance with OIG's recommendations for corrective actions were pursued. Audit findings will be tracked by OIG. An agency will have a corrective action plan to OIG within 30 days of receipt of a Notice of Findings. Failure of an agency to complete corrective action within 60 days of submission of their corrective action plan will be reported to the cabinet secretary by the OIG at least 5 days prior to the next-scheduled staff meeting. The designated cabinet officer will determine whether this will be brought up at meetings or in e-mails to the various agencies that are out of compliance.

D. Projected Savings Based upon Previous Inspection Program

Although the audits will be different in focus than the inspections, which were not tracked, there is information gleaned from them which can be used in this new initiative. Corrective actions recommended by OIG as a result of the Inspection Program would have resulted in enormous savings to the cabinet if implemented when made in 2005. For example, in case no. 2005-OIG-0064, in-state travel expense was \$575,000 for the fiscal year 2005. This particular

agency had a policy of mileage reimbursement to the employees for personal vehicle usage. OIG recommended leasing vehicles which would have had an estimated savings of \$40,705 in fiscal year 2005. Leased vehicles are replaced every 100,000 miles. Forty-three employees were identified as potential employees for assigned state vehicles based upon mileage driven for the year. The average miles driven by each of the forty-three candidates was 16,617. Using this yearly average, the vehicles would be replaced every six years. After the first six years, it was estimated that the cabinet would save \$244,230. On the other hand, if the vehicles were purchased by the cabinet for the employees, the cabinet would save an estimated \$127,509 per year. Over a six-year period this would save the cabinet \$765,054.

In a recent investigation involving the same department, personal mileage reimbursement again became an issue. However, it became the subject of OIG's investigation only because an anonymous caller reported that state employees were carpooling to their destination and individually claiming mileage reimbursement. The state employees travelled in their private vehicles to the same destination and dutifully claimed individual mileage reimbursement. The investigator estimated the savings would have been approximately \$1,000 if they had carpooled. Multiple trips throughout the year could waste thousands of dollars in unnecessary expenditures of state funds. The cabinet should take note that in August 2008, Secretary Vance asked cabinet personnel to use state vehicles for travel to meetings in order to save reimbursement for mileage.

In inspection no. 2005-OIG-0125, OIG recommended that the agency hire two state programmers. By having state employees do their programming, the agency would have saved some \$130,000 per year. The state employees would cost \$141,900 as compared to the contractors at charges of \$272,480 per year. This assumed that the contractors would train the state programmers and that state employees could be retained on state government pay scale.

CONCLUSION

We have undertaken an ambitious plan. The listing of a particular audit or inspection does not necessarily mean that problems exist now or in the past or even guarantee that a review of the seven agencies will be undertaken. The reality of limited resources and the priorities unknown at this time but arising from exigencies throughout the year may determine which audits or inspections can be initiated. Of course, the feedback of management along the way will not only be solicited at every turn, but it will determine whether the Plan yields information of vital importance to the cabinets. The chief aim of the audits is to save the cabinets money during the budget crisis.

With the reemphasis on environmental investigations, the OIG will be following its original mandate more closely. On the personnel side, the cabinets will experience no decrease in services. The administrative and criminal investigations will receive priority. Additional investigations may be identified during the Audit Plan. There will be no additional costs to the cabinet. The Plan will maximize the use of all OIG personnel: the auditors and the investigators.

Respectfully submitted,

Deedra Benthall, Inspector General
Labor, Public Protection, and Energy and Environment
cabinets