

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

A REVIEW OF THE STATE'S CONTRACTS
WITH POSITIVE INCIDENT CONTROL, A
CONTRACTOR FOR HAZARDOUS WASTE CLEANUP

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-741

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WITH POSITIVE INCIDENT CONTROL, A
CONTRACTOR FOR HAZARDOUS WASTE CLEANUP

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P-741

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 448
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the activities of state agencies contracting with Positive Incident Control for emergency toxic cleanups. The report indicates that the Department of Transportation and the Department of Fish and Game overpaid Positive Incident Control for the cleanup of hazardous waste spills throughout the State. In addition, the report indicates that the Department of Transportation did not comply with state contracting requirements. Finally, the report indicates that the Department of Fish and Game did not comply with the State's Hazardous Material Incident Contingency Plan during the cleanup of a hazardous waste spill that occurred in Santa Barbara.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Tom Hayes".

for THOMAS W. HAYES
Auditor General

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SUMMARY

RESULTS IN BRIEF

Positive Incident Control (PIC) is a firm that performed emergency cleanups of hazardous waste spills for the Department of Transportation (Caltrans), the Department of Fish and Game, and the Department of Health Services (DHS). During our review of state agency contracts with PIC, we found the following conditions:

- Caltrans overpaid PIC at least \$19,307 of the \$163,378 that it paid for the cleanup of 21 spills that occurred throughout the State;
- Caltrans did not obtain competitive bids or the required approval from the Department of General Services for its hazardous spill contracts;
- The Department of Fish and Game paid PIC approximately \$58,000 for services that it did not receive during the cleanup of a spill that occurred in Santa Barbara in May 1984;
- During the cleanup of the Santa Barbara spill, the Department of Fish and Game did not fulfill its responsibilities as outlined in the State's Hazardous Material Incident Contingency Plan; and
- Caltrans and the DHS have not recovered from the responsible parties any of the funds spent to clean up the Santa Barbara spill.

BACKGROUND

Positive Incident Control (PIC) performs engineering, consulting, and disposal work related to hazardous waste. Beginning in fiscal year 1982-83 and continuing into fiscal year 1987-88, PIC contracted annually with Caltrans to clean up spills of hazardous waste on the State's highways. The Department

of Fish and Game and the DHS also used PIC to clean up hazardous waste spills although they did not enter into formal contracts with PIC.

In 1984, both Caltrans and the Department of Fish and Game used PIC to clean up a spill that occurred in Santa Barbara. On May 14, 1984, a truck spilled its load of mixed chemicals onto Highway 101 in the City of Santa Barbara, and the chemicals entered Mission Creek. Caltrans requested PIC to clean up the spill on Highway 101, for which it paid PIC \$76,823.94. In addition, the Department of Fish and Game paid PIC \$354,441.58 to clean up Mission Creek.

In June 1985, the DHS received an allegation that PIC had violated the Hazardous Waste Control Law. During the investigation, the district attorney's office in Kern County, where PIC's headquarters is located, seized PIC's records and began criminal action based on charges filed against PIC and a company official. The case is scheduled for a hearing in April 1988. On October 27, 1987, PIC filed for protection under Chapter 11 of the Bankruptcy Act.

PRINCIPAL FINDINGS

The Department of Transportation
Overpaid Positive Incident Control
and Did Not Contract Properly

Because Caltrans did not verify the accuracy of the invoices received from PIC, Caltrans overpaid PIC approximately \$7,358 for the cleanup of the Santa Barbara hazardous waste spill and at least \$11,949 for 20 other spills. In addition, Caltrans did not obtain competitive bids or obtain the required approval from the Department of General Services for its hazardous spill contracts; thus, Caltrans cannot assure the State that it obtained the lowest prices or complied with the law.

The Department of Fish and Game Overpaid
Positive Incident Control and Did Not Comply With
the Hazardous Material Incident Contingency Plan

Because the Department of Fish and Game (DFG) did not verify the accuracy of the invoice submitted by PIC for the cleanup of Mission Creek, the DFG paid PIC approximately \$58,000 for services that it did not receive. In addition, the DFG representatives did not remain at the spill site throughout the cleanup and therefore did not fully document the use of staff and equipment, as outlined in the State's Hazardous Material Incident Contingency Plan. Without this documentation of the work performed, the DFG cannot assure the State that the spills were effectively and economically cleaned up.

The DFG is the lead agency responsible for all off-highway spills, yet it has not developed contracts or interagency agreements for cleanup of off-highway spills. Instead, after a spill has occurred, the DFG relies on its wildlife protection personnel to determine which contractor would be best suited to clean up the spill. In the Santa Barbara case, the DFG's wildlife protection representative directed PIC to clean up the spill without first obtaining a formal contract with PIC or a written agreement of the costs.

The Department of Transportation
and the Department of Health Services
Have Not Recovered Funds Spent for the
Cleanup of the Santa Barbara Spill

Caltrans has not recovered from the responsible parties the \$87,227.11 that it spent to clean up the hazardous waste spill that occurred in May 1984 on Highway 101 in Santa Barbara. In August 1986, Caltrans requested a collection agency to pursue recovery of the funds; however, as of February 12, 1988, no funds had been recovered. Similarly, the DHS has not recovered the \$354,441.58 that the Department of Fish and Game paid to PIC to clean up Mission Creek, which was contaminated by the

same spill that occurred in Santa Barbara. Moreover, although required by law to pursue recovery of the funds, the DHS did not file a complaint against the responsible parties until December 24, 1987.

Corrective Action

Caltrans has taken action to correct some of the problems identified in this report. District directors have been instructed to ensure that invoices are accurate before approving payment to contractors. Also, Caltrans has revised its contract to include provisions for district personnel to use when selecting a contractor to clean up a spill. Finally, the contract bid specifications for the contract for fiscal year 1988-89 require contractors to submit price schedules that specify charges for travel, equipment, and subsistence.

RECOMMENDATIONS

To ensure that it receives the services for which it is paying, complies with the law, and obtains the lowest prices, the Department of Transportation should take the following actions:

- Verify contractors' invoices before approving the invoices for payment;
- Either submit the hazardous spill contracts to the Department of General Services for approval or sufficiently justify exempting a contract from DGS approval; and
- Obtain competitive bids from all contractors.

To ensure that it receives the services for which it is paying and complies with the State's Hazardous Material Incident Contingency Plan, the Department of Fish and Game should take the following actions:

- Require onsite representatives to document the work performed throughout each cleanup, and use this documentation to verify contractors' invoices; and
- Review its responsibilities as outlined in the State's Hazardous Material Incident Contingency Plan, and establish procedures to either contract with emergency response firms for the cleanup of hazardous waste spills or establish interagency agreements to use other state agencies' contractors.

To ensure that they recover the funds spent for the cleanup of the Santa Barbara spill, the Department of Transportation and the Department of Health Services should continue to actively pursue collection of the funds from the responsible parties.

AGENCY COMMENTS

Caltrans agrees with the findings and the recommendations in the report and states that it has taken steps to implement all of the recommendations.

The Department of Fish and Game recognizes the need to train its regional personnel in documenting spill cleanups and in verifying invoices received from contractors. As a result, the department is currently revising its Oil and Hazardous Material Spill Contingency Plan to include provisions for training. The department will also remind its accounting staff to verify the accuracy of invoices before issuing any payments. Finally, the department plans to examine the potential benefits that could be derived from establishing interagency agreements with Caltrans and the DHS.

The DHS agrees that it should continue to pursue recovery of the funds spent for the cleanup of Mission Creek.

INTRODUCTION

Positive Incident Control (PIC) performs engineering, consulting, and disposal work related to hazardous waste. PIC cleaned up emergency spills of hazardous wastes for the Department of Transportation (Caltrans), the Department of Fish and Game, and the Department of Health Services (DHS).

Caltrans is responsible for maintaining and rehabilitating roads and highways and for ensuring that the State's highways operate efficiently. Caltrans, through its Division of Highway Maintenance, supervises the cleanup of all spilled materials on the State's highways. If the spilled material is hazardous, Caltrans may call in a specialist to clean up the spill. Beginning in fiscal year 1982-83 and continuing into fiscal year 1987-88, PIC has contracted annually with Caltrans as an emergency-response contractor to clean up spills of hazardous waste on the State's highways. According to Caltrans' records, between July 1, 1984, and October 19, 1987, PIC responded to approximately 90 spills.

As established by the State's Hazardous Material Incident Contingency Plan, the Department of Fish and Game is the State's lead agency for coordinating responses to off-highway spills involving oil and other hazardous or toxic substances. The Department of Fish and Game completed spill reports for over 800 spills during 1987.

In 1984, both Caltrans and the Department of Fish and Game used PIC to clean up a spill that occurred in Santa Barbara. On May 14, 1984, a truck spilled approximately 3,200 gallons of mixed chemicals onto Highway 101, and the chemicals entered Mission Creek. At the request of Caltrans, PIC cleaned up the spill on Highway 101, completing this cleanup on May 15, 1984. Because some of the chemicals entered Mission Creek, which is outside the jurisdiction of Caltrans, the Department of Fish and Game was notified. Although the Department of Fish and Game did not have a contract with PIC, the official from the Department of Fish and Game responsible for coordinating cleanups of hazardous waste spills instructed PIC to clean up Mission Creek. According to the Department of Fish and Game's onsite representative, PIC began cleaning up Mission Creek on May 16, 1984. On May 31, 1984, PIC left the scene with the cleanup only 75 percent complete because it was concerned that it would not be paid. Caltrans has since paid PIC \$76,823.94, and the Department of Fish and Game has paid PIC \$354,441.58.

The Toxic Substances Control Division (division) of the DHS is responsible for protecting the public health and the environment from the harmful effects of hazardous waste. The division, through its toxic substances control program, regulates various activities involving hazardous waste: generation, treatment, transportation, storage, and disposal. In addition, the program evaluates hazardous waste sites, coordinates emergency-response actions, and administers the resource recovery and the health and safety programs. According to

the division's emergency-response coordinator, the division has established contracts for emergency cleanup with four firms and has used PIC for jobs under \$2,000 although it has not entered into formal contracts with PIC.

In June 1985, the division received an allegation that PIC had violated portions of the Hazardous Waste Control Law, including transporting, handling, treating, storing, and documenting procedures. The division's enforcement office conducted an investigation and issued a report that substantiates some of the alleged violations and reveals additional violations of the Hazardous Waste Control Law. In addition, the program audits unit of the DHS reviewed PIC's accounting records to investigate allegations concerning billing improprieties. During its review, the audits unit identified examples of PIC's billing invoices that contained two types of inflated charges. First, PIC charged a 33 percent markup for services provided by subcontractors and supplies not listed in the contract although the contract allowed for only a 25 percent markup for these supplies and services. The other inflated charge related to payments on a delinquent account that was not directly related to the spills that PIC cleaned up for Caltrans.

During the DHS' investigation, the district attorney's office in Kern County, where PIC's headquarters is located, seized PIC's records and began criminal action based on charges filed against PIC and a company official by the DHS. The case is scheduled for a hearing in April 1988. On October 27, 1987, PIC filed for protection under

Chapter 11 of the Bankruptcy Act in the United States Bankruptcy Court for the Eastern District of California.

Beginning in October 1986, the Caltrans Audits Office conducted an audit of three contracts between PIC and Caltrans, covering services provided by PIC from May 1984 through September 1986. The audit revealed that PIC did not provide sufficient support for its billings. As a result, the Caltrans Audits Office determined that PIC had billed Caltrans for \$284,500.02 for which PIC did not supply supporting documentation. However, the Caltrans legal division reviewed the audit report and determined that, because of the terms of the contracts, Caltrans can only backcharge PIC for \$47,484.77. In November 1987, Caltrans billed PIC for \$47,484.77 and advised PIC that further backcharges might be justified if the contractor did not supply additional documentation to support the billings.

SCOPE AND METHODOLOGY

The purpose of this audit was to review the procedures and activities of state agencies contracting with PIC for emergency hazardous substance cleanups. Specifically, we reviewed the activities of Caltrans, the Department of Fish and Game, and the DHS to determine whether the agencies complied with the State's Hazardous Material Incident Contingency Plan and contracting requirements and the Hazardous Waste Control Law.

We reviewed the Hazardous Material Incident Contingency Plan and the Hazardous Waste Control Law to identify the responsibilities of the pertinent agencies. We also reviewed the documentation, including daily logs, invoices, and work reports for the spill that occurred in Santa Barbara, to determine whether Caltrans and the Department of Fish and Game fulfilled their responsibilities during the cleanup of this spill. However, we did not determine whether the DHS fulfilled its responsibilities because we have reviewed the activities of the DHS' Toxic Substances Control Division in prior audits.

We reviewed the DHS' investigative and audit reports to determine whether we could rely upon the conclusions reached in each of these reports. As a result of our review, we concluded that we could rely upon these reports. We reviewed the audit report issued by the Caltrans Audits Office; however, we disagreed with the methodology that the Caltrans auditors used to determine that the billings of \$284,500.02 were not supported. Further, we could not verify the determination made by the Caltrans legal office that Caltrans could backcharge PIC only \$47,484.77. Therefore, we selected and analyzed a sample of 21 invoices from those reviewed by the Caltrans' auditors.

We also reviewed the invoice that the Department of Fish and Game received from PIC for the cleanup of Mission Creek, which was contaminated by the Santa Barbara spill, to determine whether the charges included in the invoice were appropriate. Since the Department of Fish and Game did not have a contract with PIC, we used the Caltrans

contract that was in effect at the time of the spill as a basis for determining whether the charges on the invoice were appropriate. Finally, we did not review any of PIC's records because the district attorney in Kern County had seized all of PIC's records.

We also reviewed the contract that Caltrans entered into with independent contractors for the cleanup of hazardous waste spills to determine whether Caltrans complied with the State's contracting requirements. In addition, we compared Caltrans' procedures for contracting for emergency-response cleanup to the DHS' procedures.

Finally, we reviewed Caltrans' and the DHS' efforts to recover, from the responsible parties, the funds spent to clean up the Santa Barbara spill.

AUDIT RESULTS

I

THE DEPARTMENT OF TRANSPORTATION OVERPAID POSITIVE INCIDENT CONTROL AND DID NOT CONTRACT PROPERLY

Because the Department of Transportation (Caltrans) did not verify the accuracy of the invoices that it received from Positive Incident Control (PIC), Caltrans overpaid PIC approximately \$7,358 for the cleanup of a hazardous waste spill in Santa Barbara, and it overpaid PIC at least \$11,949 for cleaning up 20 other spills throughout the State. In addition, Caltrans did not obtain competitive bids or obtain the required approval from the Department of General Services for its hazardous spill contracts; thus, Caltrans cannot assure the State that it obtained the lowest prices or complied with the law.

Overpayments

Section 8422.1 of the State Administrative Manual states that, before issuing payment, agencies should determine that items or services listed on an invoice have been received. In addition, Chapter 10, Section 2.1.1 of the Caltrans Accounting Manual states that the accounts payable units in the district accounting offices should verify all invoices and avoid duplicating payments or overpaying invoices. Finally, according to Caltrans Highway Spill Manual, when a

spill occurs requiring the use of an independent contractor, a Caltrans representative must remain at the spill site while the contractor is cleaning up the spill to record on a hazardous spill work report such information as labor, materials, and equipment used by the contractor. District personnel should then use this report to verify the invoice when it is received from the contractor.

We reviewed the invoice and the hazardous spill work report for the Santa Barbara spill and found that Caltrans had overpaid PIC approximately \$7,358 for labor, equipment, and services provided by a subcontractor during the cleanup of the spill. For example, in the section of the invoice listing the charges for labor, PIC listed an analytical chemist. However, our review of the subcontractor's invoice and additional documentation related to the spill disclosed that the chemist, whom PIC had listed as an employee, was actually employed by the Environmental Protection Corporation, one of PIC's subcontractors. We reviewed the invoice that the Environmental Protection Corporation had submitted to PIC and determined that the subcontractor's invoice also included charges for an analytical chemist. Since PIC charged Caltrans for the services provided by Environmental Protection Corporation and also charged Caltrans for the services of an analytical chemist as a PIC employee, Caltrans overpaid PIC approximately \$2,979 for the services of the chemist.

In addition to billing Caltrans twice for the services of a chemist, PIC overcharged Caltrans for other labor costs. Our review of the invoice and the hazardous spill work report disclosed that for 9 of the 12 employees listed on the invoice, the number of hours that PIC charged exceeded the number of hours shown on the hazardous spill work report prepared by a Caltrans representative. As a result, Caltrans overpaid PIC \$3,973.50 for inflated labor hours.

We also reviewed a sample of 21 invoices submitted to Caltrans by PIC for 20 other spills and the corresponding hazardous spill work reports prepared by onsite Caltrans representatives during the cleanups. Our analysis of these invoices disclosed that PIC overcharged Caltrans for labor and subcontractors' services. For example, our review disclosed that Caltrans had overpaid PIC approximately \$10,407 for labor costs. In addition, we determined that Caltrans overpaid PIC approximately \$1,542 for the percentage markup agreed upon in the contract for subcontractors' costs.

Because contract provisions were not clearly stated, we could not determine whether the charges for travel, mileage, and subsistence were appropriate. However, we were able to determine that, for 15 of the 21 invoices, the number of hours that PIC charged Caltrans for labor exceeded the number of hours shown on the work report prepared by the Caltrans representatives. In addition, our analysis determined that, for 5 invoices, PIC charged a 33 percent markup on subcontractors' services rather than the 25 percent markup agreed upon in the contracts.

Caltrans overpaid PIC because Caltrans personnel in the district offices did not verify the invoices received from PIC and, consequently, did not know that they were inaccurate. Specifically, Caltrans personnel did not compare the invoices to the hazardous spill work reports prepared by the Caltrans representatives who were onsite during the cleanups. As a result, Caltrans overpaid PIC at least \$19,307 of the \$163,378 that it paid for the cleanup of 21 spills throughout the State.

Caltrans Did Not Contract Properly

Section 10335 of the Public Contract Code states that all contracts entered into by state agencies for services must be approved by the Department of General Services (DGS). Contracts authorized under the Streets and Highways Code are exempt from this requirement. In addition, State Administrative Manual, Section 1204, and Public Contract Code, Section 10340, require competitive bidding except in certain instances. The DHS, however, may be exempt from state contracting requirements, under the provisions of Health and Safety Code, Section 25358.5, if the director of the DHS determines that there may be an "imminent or substantial endangerment to the public health, or welfare or to the environment."

Caltrans did not obtain competitive bids or the DGS' approval for its hazardous spill contracts for each of the three fiscal years 1984-85 through 1986-87. Rather, Caltrans stamped these contracts

"Exempt from Department of General Services Approval" and awarded the contracts to all bidders who were qualified to clean up hazardous waste spills, regardless of the prices listed in each contractor's bid. Since we could not identify a code section that would exempt these contracts from the DGS' approval, we requested Caltrans' attorneys to cite the appropriate code section; however, Caltrans' attorneys could not cite any code section that would exempt these contracts from the DGS' approval.

Because Caltrans did not obtain competitive bids, it could not assure the State that it received the lowest prices. For example, three contractors providing cleanup services for Caltrans also contracted with the DHS to clean up hazardous waste spills. However, unlike Caltrans, the DHS negotiated with its contractors and established price lists for the contractors to use when charging for cleanups. As a result, two of the three contractors that had contracts with both the DHS and Caltrans charged Caltrans higher hourly rates for some services than they charged the DHS for the same services. For example, International Technology Corporation (ITC), which responded to 37 percent of the spills that Caltrans cleaned up during fiscal year 1986-87, charged Caltrans \$75 per hour for the services of a chemist. In contrast, ITC charged the DHS only \$50 per hour for the services of a chemist. Similarly, the American Environmental Management Corporation charged Caltrans \$77 per hour for a project manager whereas that corporation charged the DHS \$70 per hour for the same project manager.

Finally, since Caltrans did not obtain the DGS' approval, its hazardous spill contracts may not be enforceable because Section 10295 of the Public Contract Code states that a contract is void until approved by the DGS. Thus, Caltrans cannot assure the State that it complied with all of the State's contract laws and regulations. Further, the contracts did not provide for a systematic method that districts could use to determine which contractor to select to clean up a spill. According to the chief counsel of the DGS, contracts that do not clearly identify objective guidelines for allocating work among various contractors leave the State vulnerable to favoritism and fraud. This lack of a systematic method for selecting contractors might have been corrected by a DGS review.

Corrective Action

During our review, Caltrans initiated action to correct the problems that we identified. On November 4, 1987, the chief of Caltrans' Division of Highway Maintenance sent a memo to district directors instructing the directors to ensure that all invoices are correctly reviewed and approved before they pay contractors.

In addition, Caltrans has revised its contract to include provisions for district personnel to select the contractor that can complete the cleanup at the lowest estimated cost. According to the revised contract bid specifications for the contract for fiscal year 1988-89, contractors must submit a price schedule that specifies

charges for travel, equipment, and subsistence. However, the contract bid specifications do not indicate that Caltrans will negotiate with the contractors to obtain the lowest possible price schedule.

CONCLUSION

The Department of Transportation did not verify the accuracy of the invoices that it received from Positive Incident Control before making payments. As a result, Caltrans overpaid PIC at least \$19,307 for the cleanup of 21 hazardous waste spills throughout the State. In addition, Caltrans did not obtain competitive bids from the contractors or obtain DGS' approval for its hazardous spill contracts; thus, Caltrans cannot assure the State that it obtained the lowest prices or complied with the law.

RECOMMENDATIONS

To ensure that it receives the services for which it is paying, the Department of Transportation should verify contractors' invoices by comparing the invoices to the hazardous spill work reports and the hazardous spill contract before approving the invoices for payment.

To ensure that it complies with the law and obtains the lowest prices, the Department of Transportation should take the following actions:

- Either submit the hazardous spill contracts to the Department of General Services for approval or sufficiently justify exempting them from the DGS' approval; and

- Obtain competitive bids from all contractors.

II

THE DEPARTMENT OF FISH AND GAME OVERPAID POSITIVE INCIDENT CONTROL AND DID NOT COMPLY WITH THE HAZARDOUS MATERIAL INCIDENT CONTINGENCY PLAN

Because the Department of Fish and Game (DFG) did not verify the accuracy of the invoice submitted by PIC for the cleanup of Mission Creek in Santa Barbara, the DFG paid PIC approximately \$58,000 for services that it did not receive. In addition, the DFG representatives did not remain at the spill site throughout the cleanup and therefore did not fully document the use of staff and equipment, as outlined in the State's Hazardous Material Incident Contingency Plan. Without this documentation of the work performed, the DFG cannot verify the accuracy of the invoices that it receives or assure the State that the spills are cleaned up effectively and economically. Moreover, even though the DFG is the lead agency responsible for all off-highway spills, the DFG has not developed written contracts with contractors or interagency agreements with other state agencies for the cleanup of off-highway spills. Instead, after each spill, the DFG relies on its wildlife protection personnel to determine which contractors will be best suited to clean up the spill. In the Santa Barbara case, the DFG's wildlife protection representative directed PIC to clean up the spill without a formal contract with PIC or an agreement about the costs.

The DFG Overpaid PIC

Section 8422.1 of the State Administrative Manual states that, before issuing payment, agencies should verify that items or services listed on an invoice have been received. We reviewed the invoice that PIC submitted to the DFG and determined that the DFG paid PIC approximately \$58,000 for services that it did not receive.

Using the Caltrans contract as a basis for costs, we reviewed the invoice and the hazardous spill work report prepared for the DFG by PIC for cleanup of the Santa Barbara spill, and we determined that PIC overcharged the DFG for the costs of labor and materials. For example, PIC billed the DFG for subcontractor services for which Caltrans had already paid. Specifically, PIC charged the DFG approximately \$47,556 for the services of eight subcontractors in the cleanup of Mission Creek. However, our review of the invoice and hazardous spill work report for this cleanup disclosed that Caltrans had already paid PIC for these services, which were actually for the cleanup of Highway 101.

In addition, we determined that, as in the Caltrans' case, PIC had billed the DFG twice for the services of a chemist. PIC listed the chemist as an employee, but our review disclosed that the chemist was employed by a subcontractor. The invoice that PIC had submitted to the DFG listed both the charges for the subcontractor and the charges for

the chemist as a PIC employee. Because the DFG did not verify the accuracy of PIC's invoice, the DFG overpaid PIC \$5,608 for the services of a chemist.

Finally, PIC charged the DFG \$4,717 in unwarranted overtime. Our review of the invoice and the hazardous spill work report for the Mission Creek cleanup disclosed that PIC charged overtime for all hours worked in excess of 40 hours each week even though the contract stated that overtime would be charged on a daily basis for those hours in excess of an 8-hour day.

The accountant who reviewed the invoice stated that she checked it only for mathematical accuracy and did not verify that the services listed on the invoice had been received. In addition, according to the DFG's accounting administrator, the DFG does not have written procedures for staff to follow when reviewing and approving invoices for payment. However, according to the director of the DFG, before authorizing the payment, the accountant who reviewed the invoice requested and obtained verification from the DFG's oil spills coordinator that the services had been provided. Further, according to the director, in the past, accounting staff had been verbally instructed not to pay invoices that had not been approved for payment by appropriate field or headquarters personnel who were in a position to know that services or goods were received. The DFG is currently in the process of documenting its fiscal procedures in writing.

The DFG Did Not Comply
With the State's Hazardous
Material Incident Contingency Plan

The State's Hazardous Material Incident Contingency Plan (plan) established the State's emergency-response organization for incidents involving hazardous materials. The plan states that the DFG is the lead agency for all off-highway spills and is responsible for coordinating the necessary support activities and for documenting the incident. In addition, the plan states that each agency identified in the plan is responsible for training its own staff to ensure that activities are carried out in an effective and efficient manner. Finally, to fulfill its responsibilities as lead agency, the DFG needs to have either pre-established contracts for emergency cleanup similar to those developed by the DHS or interagency agreements for using other agencies' contractors.

The DFG did not fulfill its responsibilities under the plan during the cleanup of the Mission Creek spill and, therefore, cannot assure the State that PIC cleaned up the spill effectively and economically. Specifically, the DFG's onsite representative did not remain at the spill site throughout the cleanup; therefore, he was not able to fully document the staff and equipment used by state agencies and independent contractors throughout the cleanup. In addition, the DFG does not have contracts with contractors or interagency agreements with other state agencies for the cleanup of hazardous waste spills. For the Mission Creek cleanup in Santa Barbara, the DFG's wildlife

protection representative directed PIC to clean up the spill without a contract or written agreement about the costs. Further, PIC left the scene with the cleanup only 75 percent complete because it was concerned that it would not be paid.

The DFG's former oil spills coordinator for the Mission Creek cleanup stated that he was not aware of the documentation requirements outlined in the plan. In addition, he stated that none of the onsite representatives have received any training for documenting the cleanup of hazardous waste spills. Further, the director of the DFG acknowledged the need for training and is including this topic in the revision of the DFG's Oil and Hazardous Material Spill Contingency Plan.

Finally, according to the director, the DFG has not developed contracts with contractors or interagency agreements with other state agencies because the responsible party usually accepts liability for the incident and contracts for cleanup services directly. In other cases, the DFG frequently works in cooperation with the local agency's incident commander, who may already have a cleanup contractor at the spill site. For these cases, according to the director, it is inefficient for the DFG to hire another contractor rather than extend the services of the contractor at the spill site. Infrequently, the responsible party is unwilling to provide cleanup service or is unknown, and the DFG must contract for cleanup services. In these cases, the DFG believes that its wildlife protection personnel at the

spill site are the best informed to handle the DFG's response to the spill and to select a contractor with capabilities to match the magnitude of the event and the type of material spilled. However, since Caltrans and the DHS have established contracts for hazardous waste cleanup in all areas of the State, the DFG could establish interagency agreements to use contractors for Caltrans and the DHS instead of relying on its wildlife protection personnel to establish verbal contracts after a spill has already occurred.

CONCLUSION

Because the Department of Fish and Game did not verify the invoice that it received from Positive Incident Control for the cleanup of the Mission Creek, the DFG paid PIC approximately \$58,000 for services that it did not receive. In addition, the DFG did not fulfill its responsibilities as outlined in the State's Hazardous Material Incident Contingency Plan during the Mission Creek cleanup and, therefore, cannot assure the State that the spill was effectively and economically cleaned up. Finally, the DFG has not developed contracts with contractors or interagency agreements with other state agencies for cleaning up off-highway spills.

RECOMMENDATIONS

To ensure that it receives the services for which it is paying, the Department of Fish and Game should take the following actions:

- Require onsite representatives to remain at the spill site throughout the cleanup and to document the activities of contractors; and
- Verify invoices received from contractors by comparing the invoices to the documentation submitted by the onsite representatives.

To ensure that it complies with the requirements of the State's Hazardous Material Incident Contingency Plan, the Department of Fish and Game should take the following actions:

- Review its responsibilities as outlined in the plan and train its onsite representatives to fulfill their responsibilities in responding to hazardous waste spills; and
- Establish contracts with contractors for the cleanup of hazardous waste spills or establish agreements to use other contractors for state agencies.

III

THE DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT OF HEALTH SERVICES HAVE NOT RECOVERED FUNDS SPENT FOR THE CLEANUP OF THE SANTA BARBARA SPILL

Caltrans has not recovered from the responsible parties the \$87,227.11 that it spent to clean up the hazardous waste spill that occurred in May 1984 on Highway 101 in Santa Barbara. In August 1986, Caltrans requested a collection agency to pursue recovery of the funds; however as of February 12, 1988, no funds had been recovered. Similarly, the DHS has not recovered the \$354,441.58 that the Department of Fish and Game paid PIC to clean up Mission Creek, which was contaminated by the same spill in Santa Barbara. Moreover, although required by law to pursue recovery of the funds, the DHS did not file a complaint against the responsible parties until December 24, 1987.

Caltrans Attempts To Recover Funds

Section 730 of the California Streets and Highways Code states that any person who willfully or negligently injures or damages any state highway is liable for repairing the highway. Section 730 also states that Caltrans may recover from the responsible party the amount spent on these repairs, in addition to the costs of bringing the action to trial. Further, Chapter 9, Section 5.2.3 of the Caltrans Accounting

Manual states that the settlement of damage claims requires payment in full by the responsible party or the party's insurance carrier.

On September 20, 1984, Caltrans billed Reagen's Vacuum Truck Service, the carrier, and Janus Enterprises, Inc., the shipper, for the \$87,227.11 that Caltrans paid to clean up the Santa Barbara spill. On October 4, 1984, attorneys for Janus Enterprises, Inc. sent a letter to Caltrans to inquire why Caltrans was requesting payment since Janus Enterprises, Inc. was not responsible for the incident. However, Caltrans stated on October 25, 1984, that they were requesting payment because Janus Enterprises, Inc., the shipper, was assessed liability for failure to properly disclose all materials and the reportable quantities of those materials on the manifest as required by California Administrative Code Title 13, Section 1161.

On December 28, 1984, Enterprise Insurance Company, the insurance carrier for Reagen's Vacuum Truck Service, informed Caltrans that many claims had been filed relating to the spill in Santa Barbara, and, as a result, all payments were being held until all matters related to the spill had been resolved. According to the collection supervisor for Coastal Trade Services, since no funds had been recovered, Caltrans turned the case over to a collection agency on August 26, 1986.

On March 6, 1987, an attorney for Coastal Trade Services, the collection agency representing Caltrans, sent letters to Reagen's Vacuum Truck Service and Janus Enterprises, Inc. informing these companies that he had been retained to collect the claim. The letter states that, since Caltrans had made numerous unsuccessful attempts to obtain payment, the attorney intended to file an action against the two parties to collect the sum owed, plus interest at the legal rate.

The Department of Insurance issued a notice stating that, as of February 24, 1987, Enterprise Insurance Company, the insurance company for Reagen's Vacuum Truck Service, was in liquidation and that the State's insurance commissioner was appointed as the liquidator of Enterprise Insurance Company. Furthermore, the notice stated that all claims had to be filed on or before September 12, 1987. On July 24, 1987, the attorney for Coastal Trade Services sent a letter to the insurance commissioner describing the claim and included with the letter a police report, bills, and a newspaper article regarding the nature of the accident. In addition, the attorney stated in his letter that Janus Enterprises, Inc. had agreed to pay one-half of the claim. Further, the attorney stated that if a settlement is finally reached whereby Janus Enterprises, Inc. pays one-half of the settlement, the insurance commissioner would only be obligated to pay \$43,613.56.

On September 4, 1987, the Department of Insurance sent a letter to the attorney for Coastal Trade Services stating that the insurance commissioner acknowledged receipt of the attorney's

proof-of-claim form filed in the liquidation proceedings of Enterprise Insurance Company. The letter also stated that the claim had been forwarded to the California Insurance Guarantee Association, which is processing and paying the Enterprise Insurance Company's outstanding claims. As a result, Coastal Trade Services' attorney sent a letter to the California Insurance Guarantee Association requesting an update on the status of the claim. However, according to Coastal Trade Services' collection supervisor, as of February 12, 1988, the attorney is still awaiting a disposition of the claim from the California Insurance Guarantee Association.

The DHS' Attempts To Recover Funds

Section 25360 of the Health and Safety Code states that any costs incurred from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund shall be recovered by the attorney general upon the request of the DHS. In addition, the section states that the amount of costs that may be recovered shall include the amount paid from the Hazardous Substance Cleanup Fund and interest on that amount. Finally, the section states that the responsible parties are liable to the DHS for administrative costs in an amount equal to ten percent of the reasonable costs actually incurred or \$500, whichever is greater.

In addition, Chapter 118, Statutes of 1985, which appropriated funds from the Hazardous Substance Account to reimburse the Department of Fish and Game for the cleanup of the hazardous waste spill that

occurred in Santa Barbara in May 1984, requires the DHS to pursue the recovery, from the responsible party, of those costs incurred by the State, including any legal fees spent in response to the spill.

Despite this legislation, the DHS has not recovered the \$354,441.58 that the Department of Fish and Game paid PIC to clean up Mission Creek, which was contaminated during the May 1984 spill in Santa Barbara. According to the DHS' former senior hazardous materials specialist, after receiving the invoice for \$354,441.58 from PIC, the Department of Fish and Game requested the DHS to pay for the cleanup; however, the DHS refused because the Department of Fish and Game did not notify the DHS of the spill until after the cleanup had been completed. Consequently, the Department of Fish and Game paid PIC and supported urgency legislation requiring the DHS to reimburse the Department of Fish and Game for the cost of the cleanup. In June 1985, the Legislature instructed the DHS to pursue recovery of the funds spent for the cleanup. However, the DHS did not file a complaint against the responsible parties until December 24, 1987, and, as of February 12, 1988, the DHS had recovered no funds.

CONCLUSION

The Department of Transportation and the Department of Health Services have not recovered the funds spent for the cleanup of the hazardous waste spill that occurred in May 1984 in Santa Barbara. On August 26, 1986, Caltrans requested a

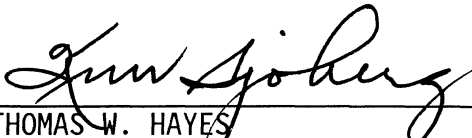
collection agency to pursue recovery of the funds; however, the DHS did not file a complaint against the responsible parties until December 24, 1987. As of February 12, 1988, no funds have been recovered by either agency.

RECOMMENDATION

To ensure that they recover the funds spent for the cleanup of the Santa Barbara spill, the Department of Transportation and the Department of Health Services should continue to actively pursue collection of the funds from the responsible parties.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



for
THOMAS W. HAYES
Auditor General

Date: April 4, 1988

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Corporations
California Highway Patrol
California Housing Finance
Agency
Economic and Business
Development

GEORGE DEUKMEJIAN
GOVERNOR OF
CALIFORNIA



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

Insurance
Housing and Community
Development
Motor Vehicles
Real Estate
Savings and Loan
Transportation
Teale Data Center
Office of Traffic Safety

March 23, 1988

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street - Suite 300
Sacramento, CA 95814

Dear Mr. Hayes,

"A Review of the State's Contracts with
Positive Incident Control, A
Contractor for Hazardous Waste Cleanups"

We have reviewed the above draft report on contractor hazardous waste cleanups. The Department of Transportation is implementing the report's recommendations.

The attached is the Departments' response to each finding, and contains the actions taken to assure that the necessary procedures will be carried out to provide that future toxic spill cleanups are properly handled.

If you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "John K. Geoghegan".

JOHN K. GEOGHEGAN
Secretary

Attachment

Department of Transportation
Response to Findings of
"A Review of the State's Contracts with
Positive Incident Control,
A Contractor for Hazardous Waste Cleanups"

Overpayment

We agree with the report's findings and recommendations. Caltrans was aware of overpayments to the contractor as a result of prior internal reviews and subsequent audits of the billings submitted for spill cleanups.

The procedures and policy manual for the verification of invoices before approving payment was updated. The highway maintenance district offices are advised to implement the necessary verifications immediately. The new contract will clarify payment provisions and contractor submissions of bills. Caltrans Audits Office has performed preaudits of all prospective contractors to verify that their accounting systems are adequate for billing highway spill services in compliance with the new contract payment provisions. Post audits will be performed of completed contracts as a final verification of bills to assure accuracy and correctness.

Caltrans Did Not Contract Properly

We agree that the contracts should be approved by General Services as required by law; and that the lowest prices should be obtained. Previous hazardous spill contracts were not submitted for approval because of an internal misunderstanding of the provisions of the Public Contract Code. Caltrans assumed that the Streets and Highway Code exempted the cleanup contracts from General Services review.

Caltrans will comply with the recommendation to submit the contracts to General Services. The new contract beginning July 1, 1988, will go through the necessary reviews by General Services. Caltrans Audits Office has also performed audits of existing contractors to obtain information on their operating costs and price schedules. Office of Highway Maintenance managers have been meeting with contractors to review their price schedules for reasonableness and comparability.

The competitive bid process, as outlined in the Public Contract Code, does not lend itself to award of a contract to more than one hazardous waste contractor. It is absolutely essential to have several contractors available to respond immediately to hazardous spills and freeway closures because of the risk to public health and the environment. Therefore, it is essential to have prearranged contracts with multiple firms throughout the State depending on their locations and ability to respond. The Request for Bids contracting process will be utilized to carry out competitive negotiation with qualified firms. Prequalification reviews have been conducted on all prospective contractors.

The Department of Transportation has not recovered funds spent for the cleanup of the Santa Barbara spill

The Department of Transportation (Caltrans) agrees with the report's findings and recommendations. Caltrans is pursuing every avenue to obtain recovery of the funds spent on the Highway 101 spill cleanup at Santa Barbara in May, 1984. Prior to the audit, Caltrans turned the collection efforts over to an agency to pursue recovery of the funds from both the carrier and shipper of the toxic waste. The Chief of Division of Financial Operations and Control concurs that the Department should continue to pursue collection through the collection agency retained for this purpose.

DEPARTMENT OF HEALTH SERVICES

714/744 P STREET
SACRAMENTO, CA 95814

(916) 445-1248

March 23, 1988



Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Mr. Allenby has asked me to respond to your report "A Review of the State's Contracts With Positive Incident Control, A Contractor for Hazardous Waste Cleanup." I am pleased to see the Department of Health Services (DHS) was actually used as a standard of comparison for proper contracting in relationship to the other two agencies discussed.

In response to your recommendation that the DHS actively pursue recovery of funds (p. 28), I wholeheartedly agree. The Toxic Substances Control Division within DHS is augmenting its emergency response program to better pursue cost recovery. New staff to be added within the next few months will also enable us to improve State oversight of contractors in the field. Previous reports and recommendations from your office have been beneficial in our adding these staff for this purpose.

Regarding your recommendation that the DHS actively pursue the recovery of the funds reimbursed to the Department of Fish and Game (DFG) for the Santa Barbara spill, the State has, as you note, filed a complaint to recover costs in that case. During the time between the transfer of funds to DFG and the filing of the complaint, the DHS and the Attorney General's Office were in communication as to the best litigation strategy. Several issues arose concerning this cleanup that were not typical of other cases, (e.g., the cleanup was conducted by another agency and the DHS funds were used to reimburse that agency). A hearing on motions filed by the defendant is scheduled for March 28, 1988.

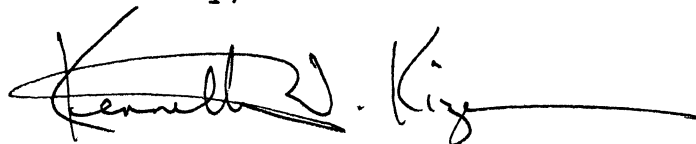
Thank you for the opportunity to comment on your report. I am pleased, in particular, that your examination of our program found

Mr. Thomas W. Hayes
Page 2

no contracting problems. We have worked hard to correct deficiencies noted in the past and I view this report as an indication of the success of these efforts.

If there are any questions, please contact me at 445-1248.

Sincerely,

A handwritten signature in cursive script, reading "Kenneth W. Kizer", with a long horizontal line extending to the right.

Kenneth W. Kizer, M.D., M.P.H.
Director

CC: Mr. Clifford L. Allenby, Secretary
Health and Welfare Agency
1600 Ninth Street, Room 450
Sacramento, CA 95814

Memorandum

To : Mr. Thomas W. Hayes
Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Date: MAR 23 1988

File No.:

Subject: Response to
Auditor General
Draft Report P-741

From : **Office of the Secretary**

We appreciate the opportunity to review the draft of your report entitled, "A Review Of The State's Contracts With Positive Incident Control, A Contractor For Hazardous Waste Cleanup."

Attached are our specific comments on the report which were prepared by the staff of the Department of Fish and Game and approved by the Director.



Gordon K. Van Vleck
Secretary for Resources

Attachment

DEPARTMENT OF FISH AND GAME

1416 NINTH STREET
SACRAMENTO, CA 95814

COMMENTS ON THE REPORT
"A REVIEW OF THE STATE'S CONTRACTS
WITH POSITIVE INCIDENT CONTROL,
A CONTRACTOR FOR HAZARDOUS WASTE CLEANUP"

Chapter II - The Department of Fish and Game (DFG) Overpaid
Positive Incident Control (PIC) And Did Not
Comply With The Hazardous Material Incident
Contingency Plan

The DFG Overpaid PIC

The Department agrees that its onsite personnel did not adequately document PIC's use of staff and equipment for the purpose of verifying contractor invoices, as outlined in the State's Hazardous Material Incident Contingency Plan. In hindsight, this lack of documentation limited the Department's ability to identify improper charges billed by PIC.

As stated in the report, the Department recognizes the need to provide formal training to its onsite regional personnel on documentation requirements for the cleanup of hazardous waste spills and on verification of invoices received from contractors. Provisions for formal training will be included in the Department's Oil and Hazardous Material Spill Contingency Plan, which is currently under revision. Also, the Department's accounting staff have been reminded to initiate payment only on invoices that have been approved for payment by appropriate field or headquarters personnel who are in a position to know that services or goods were received.

The DFG Did Not Comply With The State's Hazardous Material
Incident Contingency Plan

The Department is well aware of its lead agency responsibilities for all off-highway spills. As previously stated, the Department is in the process of revising its Oil and Hazardous Material Spill Contingency Plan. The training needs of the Department's onsite regional and field personnel will be addressed in the revised plan.

Although the Department disagrees with the recommendation to have pre-established contracts for emergency cleanup or interagency agreements for using other agencies' contractors for the reasons stated in the report, the Department will closely examine the potential benefits that could be derived from establishing interagency agreements to use contractors for Caltrans and the Department of Health Services.

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps