

FINAL

**SPECIAL AUDIT REPORT
OF THE
ENVIRONMENTAL HEALTH DEPARTMENT
AIR QUALITY DIVISION
CONTRACTS WITH ALBUQUERQUE SAN JOSE COMMUNITY
AWARENESS COUNCIL, INC.**

REPORT NO. 03-127



**CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT**



City of Albuquerque
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July 18, 2003

Internal Audit Committee
City of Albuquerque
Albuquerque, New Mexico

Audit: Environmental Health Department
Air Quality Division
Contracts With Albuquerque San Jose Community Awareness Council, Inc.
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INTRODUCTION

The Office of Internal Audit performed a special audit of the Environmental Health Department (EHD) Contracts with Albuquerque San Jose Community Awareness Council, Inc. (ASJCAC). ASJCAC was a non-profit organization formed to provide community based health education outreach services to the residents of the Albuquerque south valley. According to an article in the Albuquerque Journal dated January 31, 2003, "the ASJCAC closed its office in July 2002" after losing its state funding. This audit was performed at the request of the New Mexico State Auditor's Office.

EHD Air Quality Inspectors cited several companies in Albuquerque for violations of local air quality regulations and permits. As an alternative to potential fines, in some cases EHD allowed the alleged violators to participate in Supplemental Environmental Projects (SEPs) as a part of the remedy. According to the United States Environmental Protection Agency (EPA) Supplemental Environmental Projects brochure, "As part of an enforcement settlement, a violator may agree to do a 'Supplemental Environmental Project' (SEP)." The brochure defines an SEP as "...an environmental project that a violator voluntarily agrees to perform as part of the settlement of an enforcement action....An acceptable SEP must improve, protect or reduce risks to public health or the environment."

EHD required that an alleged violator enter into an SEP with four non-profit organizations. ASJCAC was one of these organizations. In settlement of the violation, the alleged violator agreed, among other items, to write a check to the ASJCAC for \$30,000. EHD also allowed two other alleged violators to pay for SEPs involving ASJCAC as part of the settlement of their violations. One of the alleged violators paid ASJCAC \$1,250 for an SEP and the other paid \$3,750 for another SEP.

SCOPE

This audit and its conclusions are based on an examination of various transactions and reports. Our fieldwork was completed on May 15, 2003. This report is based on our examination of the auditee's activities through the completion date of our fieldwork and does not reflect events or accounting transactions subsequent to that date.

Our audit did not include an examination of all the functions, activities, and transactions related to the EHD's contracts with ASJCAC and the management of the SEP program. Our audit test work was limited to the following areas:

- Review terms of the contracts to determine if the contractor (ASJCAC) complied with the terms of the contracts.
- Evaluate compliance with City, State and Federal laws, rules and regulations.
- Review EHD's management of the contracts.

The audit was conducted in accordance with Government Auditing Standards, except Standard 3.33, requiring an external quality control review.

FINDINGS

The purpose of an internal audit is to identify changes in the auditee's activities, which would improve its effectiveness, efficiency and compliance with administrative policies and applicable rules and regulations. Therefore, the auditee's activities, which appear to be functioning well, are not usually commented on in audit reports. The following findings concern areas, which we believe would be improved by the implementation of the related recommendations.

1. EHD MANAGEMENT SHOULD DETERMINE IF ALLOWING SEPs IS IN THE BEST INTEREST OF THE CITIZENS OF ALBUQUERQUE.

The Environmental Protection Agency (EPA) Supplemental Environmental Projects Policy, Paragraph C, LEGAL GUIDELINES states:

“ There must be a relationship between the violation and the proposed project. This relation exists only if:

- a. The project is designed to reduce the likelihood that similar violations will occur in the future; or
- b. The project reduces the adverse impact to public health or the environment to which the violation at issue contributes; or
- c. The project reduces the overall risk to public health or the environment potentially affected by the violation at issue.”

EHD internal policies provide guidance for managing SEPs. The policy states:

“VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

All Supplemental Environmental Projects (SEP) in lieu of a monetary penalty fees must be performed in accordance to the following minimum guidelines:

1. The project must be approved by the Department.
2. The project may not cost less than the value of the penalty fee.
3. The start and completion date for the project must be specified in a compliance agreement drafted by the Legal Department.
4. The start date of the project must be no later than six months from the time the compliance agreement is issued.
5. The project must benefit environmentally the affected area where the violation occurred or other areas as approved by the Department.”

None of the three SEPs that were entered into with ASJCAC, Inc. met the criteria as set forth by the EPA SEP Policy or EHD policy for awarding SEPs. For example, EHD issued a Notice of Violation (NOV) to an Albuquerque company (the alleged violator) for violation of the maximum pound-per-hour limits on oxides of nitrogen during the period from March 10, 1998, through June 30, 2001. According to EHD records, the alleged violator was issued an NOV for \$1,788,400. Through negotiation, the alleged violator initiated remediation actions at a significant cost. In addition, EHD arranged for the alleged violator to issue four checks for \$30,000 each to four groups for performing SEPs.

One of the \$30,000 checks issued by the alleged violator was payable to ASJCAC. The City entered into an agreement with ASJCAC for an SEP to compile and deliver to EHD, demographic and environmental data regarding the ASJCAC area in return for the \$30,000 check. The EHD Air Quality Division Manager, not the alleged violator, dictated the SEP contractor and the scope of work to be performed for the SEP. The scope of work was not

consistent with the EPA SEP policy that states SEPs should be designed to: reduce the likelihood of similar violations in the future; reduce the impact to public health of the violation; or reduce the overall risk to public health by the violation at issue.

The Environmental Protection Agency (EPA) Supplemental Environmental Projects Policy, Paragraph D CATEGORIES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS identifies projects which are not acceptable as SEPs, including "General educational or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, promoting recycling in a community; . . . Studies or assessments without a requirement to address the problems identified in the study. . ."

The decisions to include the SEPs in the compliance agreements were made by the Air Quality Division Manager. The EPA SEP Policy dictates that the alleged violator proposes any SEPs in lieu of penalties. The alleged violator should develop the scope and select any contractors involved. According to the EPA SEP Policy, the role of the enforcing agency should be to:

- determine that the project meets the basic definition of an SEP;
- ensure that all legal guidelines are met including proving the relationship between the violation and the SEP;
- ensure that the project fits within one of the designated categories;
- determine the amount of penalty mitigation (determined by formula); and
- ensure that the project satisfies all of the implementation and other criteria.

The Air Quality Division Manager should not have had the primary responsibility for initiating the SEPs. It appears that the Air Quality Division Manager's actions were not consistent with the EPA guidelines.

During the period from March 1998, through December 2001, the Air Quality Division Manager initiated 17 SEPs as part of the remedies for several alleged violations. The alleged violators paid a total of \$173,950 for the 17 SEPs and avoided potential penalties totaling \$1,872,850. If the penalties had been paid, the revenue would have been deposited to the City's General Fund, in accordance with State Statute.

According to an EHD official, the current administration has not approved any SEPs since December 2001.

RECOMMENDATION

EHD management should determine if allowing SEPs is in the best interest of the citizens of Albuquerque. EHD should ensure that EPA SEP and internal department policies are followed if any additional SEPs are approved.

EXECUTIVE RESPONSE FROM EHD

“SEPs are in the best interest of the citizens of Albuquerque because they are intended to make reparation to the impacted community. EHD/AQD (the division) is reviewing and revising the Compliance Assurance Procedures, which include SEP procedures. This process will include review of EPA SEP Guidelines, and the division will incorporate appropriate EPA provisions into the division’s Compliance Assurance Procedures. The division will ensure that these procedures are followed for any future SEPs.”

2. EHD SHOULD CONSULT WITH THE CITY’S LEGAL DEPARTMENT TO DETERMINE IF IT SHOULD PURSUE REIMBURSEMENT OF THE SEP FUNDS FROM ASJCAC.

ASJCAC received checks from three alleged violators totaling \$35,000 for three SEPs. The EHD Air Quality Division Manager arranged for companies that had been cited for violations of air quality standards to make payments to ASJCAC for SEPs as part of settling enforcement actions.

A. SEP Contract for \$30,000

ASJCAC received a check for \$30,000 on December 4, 2001. The hand delivered check was accompanied by a letter that stated, “I understand that, in return for accepting the enclosed \$30,000 check, Albuquerque San Jose Community Awareness Council (ASJCAC) will obtain, compile and deliver to me demographic and environmental data regarding the ASJCAC area.... ASJCAC will meet and consult with me as Manager of the EHD Air Quality Division (AQD) regarding the data to be obtained, the form in which the data shall be compiled and the deadline by which ASJCAC shall deliver the data to AQD. At a minimum, the data shall include the information described in the attachment to this letter, and shall be delivered to AQD as of the date stated in the attachment.” The Manager of the EHD Air Quality Division signed the letter agreement. The Executive Director of ASJCAC signed the letter agreement as having understood and agreed to the terms. The attachment to the

letter agreement specified the demographic and environmental data to be developed by ASJCAC and stipulated a completion date of April 1, 2002.

It appears that the EHD Air Quality Division Manager did not adequately follow-up with ASJCAC to ensure that the SEP was being completed in accordance with the letter agreement. The Director of EHD sent a letter dated May 13, 2002 to ASJCAC requesting that ASJCAC provide the following information:

1. "a detailed written description of the data submitted to the AQD Manager, and a copy of all reports, documents, data and other information that formed the basis of, and led to the production of the data delivered to the AQD manager; and
2. "a detailed written description of the disposition of the \$30,000 ASJCAC obtained in relation to the work to be done by ASJCAC."

In a letter dated May 29, 2002, EHD set a new completion date for the project of September 30, 2002. The next correspondence on file was from EHD to ASJCAC dated June 5, 2002, outlining progress reports to be provided by ASJCAC. ASJCAC did submit monthly progress reports showing which of the three stages the contractor was at. The stages were; Unfinished to Date, Processing and Complete. The monthly progress reports listed seven parameters to be completed. Based on the information in the progress reports submitted by ASJCAC, it appears that only one of the seven parameters, Community Boundaries, was completed.

A request for an extension of the deadline for project deliverables from September 30, 2002 to November 30, 2002 was received by EHD on September 30, 2002. A final work product for the SEP was received by EHD on December 31, 2002. The "Project Submittals" consisted of 2000 Census data for the San Jose area, a map of the community boundaries, a one-page write-up of "Perceived Environmental Impacts" and 23 completed copies of a ten-question, one-page survey. The submittals did not include a compilation of the results of the survey. The Project Submittals do not appear to meet the requirements of the agreement.

Internal Audit attempted to contact ASJCAC on several occasions. When the former Executive Director was reached by phone she indicated that there were no financial records available for Internal Audit to examine. Without the financial records, it was not possible to determine how the funds were spent.

B. SEP Contract for \$1,250

ASJCAC was awarded an SEP of \$1,250 on June 18, 2001 to advertise and coordinate a meeting among members of the San Jose community, elected officials, economic development stakeholders and staff for the Air Quality Division. The contract stated, "By signing this Agreement, ASJCAC agrees by October 15, 2001, ASJCAC will deliver to the Manager of the Albuquerque Environmental Health Department Air Quality Division a short written report that shows ASJCAC used the \$1,250 consistent with the purposes described in Section IV.9.E of this agreement."

A report was provided by ASJCAC, which included copies of EPA information about the San Jose area, highlighting the pollution situations affecting the area, and photographs of the area. However, it did not address the requirements of the agreement. ASJCAC had agreed to advertise and coordinate a meeting among stakeholders. It appears that the meeting did not take place. Additionally, financial records for this SEP were not available from ASJCAC.

C. SEP Contract for \$3,750

ASJCAC was awarded another SEP of \$3,750 on June 18, 2001. The SEP contract stated that the purpose was "... to offset some of the expenses incurred by members of the San Jose community while they prepare to attend, and attending a workshop held by the Air Quality Division of the City of Albuquerque Environmental Health Department." The contract stated further that "ASJCAC expenses may include, but are not limited to costs of research performed by San Jose community members when preparing to attend the workshop, costs of seeking and receiving community input, and costs of preparing materials to submit at the workshop."

A formal workshop was not held. According to EHD management, instead ASJCAC set up a detailed protocol for having such meetings. ASJCAC submitted a report to EHD that consisted of 2000 Census data for the San Jose Community, and a map of the community. There was no information presented that documented the expenses for preparing to attend the workshop, the costs of seeking input or the costs of preparing materials to submit at a workshop. The financial information documenting how the \$3,750 was spent was not available for review.

The ASJCAC purportedly "closed its doors" in July 2002. When contacted in March 2003, the former Executive Director claimed not to have financial records available for review. However, on December 16, 2002, the ASJCAC entered into a contract with the County of Bernalillo (the County) with a term from December 16, 2002, through June 30, 2003. The "former" Executive Director of ASJCAC signed the contract with the County. As a result, it

appears that the ASJCAC may not actually be out of business, and is refusing to provide requested financial records.

RECOMMENDATION

EHD should consult with the City's Legal Department to determine if steps should be taken to pursue reimbursement of the SEP funds from ASJCAC and/or its former directors for failure to meet the terms of the June 18, 2001 contracts and the December 4, 2001 SEP letter agreement.

EXECUTIVE RESPONSE FROM EHD

"ASJCAC delivered the final version of its report to the division on December 31, 2002. The division evaluated the report based on the seven criteria attached to the ASJCAC-AQD letter agreement. The criteria included demographic and environmental data. As a result of its evaluation, the division concluded that a complete SEP deliverable was received from ASJCAC. Although the deliverables did comply with the letter agreement, there is some question as to whether the SEP was within the EPA and division guidelines for SEPs."

"The division will consult with the City's Legal Department to determine if steps should be taken to pursue reimbursement of other SEP funds from ASJCAC and/or its former directors."

3. EHD SHOULD FORMALIZE ITS PROCEDURES FOR ISSUING NOTICES OF VIOLATION

One of the responsibilities assigned to EHD is enforcement actions for violations of local air quality regulations and permits. The Air Quality Division issues an NOV when a business is found to be in violation of local air quality regulations and permits.

According to Air Quality Division management, the division does not have detailed procedures in place for enforcement actions. As a result, EHD has not consistently issued NOVs. Revenues from air quality penalties have decreased significantly in recent years. During FY2001, the City recorded air quality penalty revenues of \$42,350. In addition to the penalty revenues received, the Air Quality Division allowed SEPs amounting to \$56,550 for a total of \$98,900 in potential penalties in FY2001. During the first eleven months of

FY2003, the City has recorded only \$2,100 in air quality penalty revenues and has not allowed any SEPs in lieu of penalties.

RECOMMENDATION

EHD should develop, adopt and comply with formal procedures for enforcement actions regarding alleged violations of local air quality regulations and permits. EHD should consistently initiate enforcement actions to businesses that violate local air quality regulations and permits.

EXECUTIVE RESPONSE FROM EHD

“By December 31, 2003, the division will develop, adopt and comply with formal procedures for enforcement actions involving alleged violations of local air quality regulations and/or permits. EHD will initiate enforcement actions for violations of local air quality regulations and permits consistent with formal division enforcement procedures.

“EHD has made substantial progress redrafting the formal procedures for enforcement actions, which will include an expanded policy on SEPs. The revised SEP policy will insure accountability for the potential violator, the potential SEP recipients and the division.”

CONCLUSION

By implementing these recommendations, the Environmental Health Department, Air Quality Division will better fulfill its responsibilities for enforcing the local air quality regulations.

We appreciate the assistance and cooperation of the Environmental Health Department, Air Quality Division and Legal Department personnel during the audit.

Principal Auditor

REVIEWED AND APPROVED:

APPROVED FOR PUBLICATION:

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