

LEGISLATIVE AUDIT COMMISSION



Review of
Department of Nuclear Safety
Two Years Ended June 30, 2003

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REVIEW: 4205
DEPARTMENT OF NUCLEAR SAFETY
TWO YEARS ENDED JUNE 30, 2003

RECOMMENDATIONS - 5
PARTIALLY ACCEPTED - 2
ACCEPTED - 3
REPEATED RECOMMENDATIONS - 0

PRIOR AUDIT FINDINGS/RECOMMENDATIONS - 0

This review summarizes an audit of the Illinois Department of Nuclear Safety for the two years ended June 30, 2003, filed with the Legislative Audit Commission April 6, 2004. The auditors performed a compliance audit in accordance with Government Auditing Standards and State law. Effective July 1, 2003, Executive Order Number 12 (2003) transferred all powers, duties, rights and responsibilities vested in the Illinois Department of Nuclear Safety to the Illinois Emergency Management Agency.

The Illinois Department of Nuclear Safety was created in 1980 by Executive Order and by enabling legislation. The legislation transferred certain rights, duties, and powers relative to the regulation of sources of radiation from the Department of Public Health, the Environmental Protection Agency, and the Office of the State Fire Marshal to the Department of Nuclear Safety. The Department's mission is to protect the public health of the citizens of Illinois from the potential hazards of radiation by performing the following functions:

- monitoring nuclear power plants and other nuclear facilities;
- preparing and exercising emergency response plans for radiological accidents;
- assuring proper operation of radiation-producing equipment;
- regulating radioactive materials and low-level radioactive waste; and
- inspecting shipment of radioactive cargo and measuring radioactivity in the environment.

The Department's responsibilities include monitoring 13 commercially owned nuclear reactors, regulating approximately 10,600 radiation facilities, 27,000 radiation producing machines, and providing professional certification to approximately 11,300 medical radiation technologists. The Department also initiates programs designed to inform and educate the general public, State legislators, local schools and elected officials about the hazards of radiation and the Department's role in protecting the public.

The Department is made up of five offices as follows:

- Office of Administrative Services;
- Office of Radiation Safety;

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- Office of Nuclear Facility Safety;
- Office of Environmental Safety; and
- Office of Mitigation and Response.

Each office is responsible for certain functions.

Appendix A contains a summary of Department activity measures for FY03, FY02, and FY01.

Mr. Thomas W. Ortciger was the Director of the Department of Nuclear Safety during most of the audit period. Mr. Gary Wright became Director on February 16, 2003. Under Executive Order 12 (2003), which placed the Department of Nuclear Safety under the Illinois Emergency Management Agency (IEMA), Mr. Wright became the Assistant Director of the Division of Nuclear Safety. Mr. Wright has been associated with the Department in its many variations since 1973. Mr. William Burke is the Director of IEMA.

The average number of employees is as follows:

	FY03	FY02	FY01
Administrative Support	42	55	58
Environmental Safety	33	38	39
Nuclear Facility Safety	40	47	48
Radiation Safety	46	47	48
Mitigation and Response	20	27	26
TOTAL	181	214	219

Expenditures From Appropriations

The General Assembly appropriated a total of \$33,123,600 to the Department in FY03, of which \$296,800 was from the General Revenue Fund. In FY03, about 93% of the Department's appropriations were derived from the Nuclear Safety Emergency Preparedness Fund (\$20,238,600) and the Radiation Protection Fund (\$10,583,200). Total expenditures increased from \$24,331,376 in FY02 to \$25,848,184 in FY03. Appendix B provides a summary of the appropriations and expenditures by fund for the period under review, as well as expenditures by major line items.

Operations expenditures increased from \$24,331,376 in FY02 to \$25,848,184 in FY03. The increase is due primarily to a change in the agency responsible for the administration of the State Police patrols around power plants. In FY03, Nuclear Safety became responsible for the administration of the program.

Cash Receipts

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Appendix C provides a summary of the Agency's cash receipts for FY03-FY01. Total cash receipts increased from \$24,512,430 in FY01 to \$25,273,064 in FY02, to \$25,654,501 in FY03. Increases in various cash receipt items were due primarily to the institution of new fees and fee increases. Some of the new fees and fee increases include radiation technologist applicant fees; drinking water permit fees; and radiation machine inspection/registration fees. The low-level waste fees were reduced from \$90,000 to \$30,000 per reactor in FY03.

Property and Equipment

Appendix D provides a summary of property and equipment for FY03 and FY02. Total property and equipment increased from \$22,500,000 as of July 1, 2001 to \$22,872,000 as of June 30, 2003.

Accountants' Findings and Recommendations

Condensed below are the five findings and recommendations presented in the audit report. There were no repeated recommendations. The following recommendations are classified on the basis of information provided in the audit report and in a memo dated August 17, 2004 from Kevin Noone, Administrative Officer, Division of Nuclear Safety, Illinois Emergency Management Agency.

Partially Accepted

- 2. Communicate the importance of accurate and timely submission of financial reporting information to the appropriate personnel and direct senior fiscal management to perform a supervisory review of the GAAP reporting package to insure accurate and timely submission of all required information.**

Findings: Nuclear Safety did not submit accurate or timely financial reporting information to the State Comptroller. The auditors noted the following errors in the GAAP reporting package forms:

- Understated reported deferred revenue in relation to statutory account balance limits in the Nuclear Safety Emergency Preparedness Fund by almost \$1.3 million;
- Understated reported deferred revenue for the Foreign Reactor Fuel Shipping Program in the Radiation Protection Fund by \$27,000; and
- Understated the beginning receivables balance in the Foreign Reactor Fuel Shipping Program in the Radiation Protection Fund by \$7,000.

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The auditors also noted that no supervisory review of the GAAP reporting package forms was performed prior to submission to the Comptroller. Additionally, information regarding compensated absences for FY03 was submitted eight days late, and portions of the FY03 GAAP package were submitted over ten days late. The Comptroller sent comments to Nuclear Safety three times beginning September 18, 2003 regarding the GAAP reporting package forms that required a response. Nuclear Safety did not respond to the Comptroller until October 30, 2003.

Response: Partially Accepted. The agency will take extra efforts to ensure correct data is included in the GAAP packages and that required information is submitted in a timely manner. The Department of Nuclear Safety merged into the Illinois Emergency Management Agency (IEMA) as of July 1, 2003. Fiscal staff within DNS' Office of Administrative Services were reassigned or relocated and the Office Manager was laid off. Remaining OAS staff began fiscal duties within IEMA's Bureau of Finance. The Finance Bureau of IEMA processed GAAP packages for IEMA and Nuclear Safety.

Regarding the noted errors in the reporting packages:

- For the Nuclear Safety Emergency Preparedness Fund, the \$1,290,000 error was due to an omitted deferred revenue item. However, \$21,600 of the auditors' calculation, listed as Lapse Period Grants, was incorrect. Payments totaling \$21,600 were made to the City of Springfield for utility bills, not grants.
- For the Radiation Protection Fund, the \$27,000 and \$7,000 errors cited were due to an erroneous carry-over amount from fiscal year 2001.

The Accounting Manager, a senior staff person in the accounting unit, prepares the GAAP packages and also reviews the GAAP packages before submittal to the Comptroller's Office. IEMA does not concur with the audit finding that no supervisory review of the GAAP reporting package forms was performed.

IEMA has submitted information to the Comptroller's Office on a timely basis. IEMA does not concur with the audit finding that information was submitted late.

The Comptroller's comments were being faxed to the wrong bureau and finance did not receive the comments on a timely basis. Also, the return fax cover sheets had an incorrect fax number that does not belong to the Office of the Comptroller. IEMA does not concur with the audit finding that the Department did not respond to the Comptroller until October 30, 2003.

Regarding the problem noted in the GAAP package, the Comptroller's Office submitted incorrect information concerning the CFDA program name and number for the SCO-563 for fund 067. The Comptroller submitted CFDA program 81.079. This program does not exist and was verified by KEB (Kerber, Eck and Braeckel). The grant agreement listed the CFDA as N/A also verified by KEB.

Auditors' Comments: We stand by the results of our audit and the facts as stated in the audit findings. The \$1,290,000 deferred revenue adjustment is correct as stated. The adjustment was based on the cash balance at June 30, 2003 less any lapse period

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expenditures. Whether the \$21,600 was listed as a grant or utility bill does not affect the adjustment.

The \$27,000 and \$7,000 were not erroneous carry-overs from fiscal year 2001. The \$27,000 adjustment relates to a grant reimbursement received in September 2003. The \$7,000 was a similar adjustment made to the receivables' balance at the beginning of the year.

DNS submitted the GAAP package reporting forms for funds 796f, 882, 942 and 943 on September 3, 2003 according to the Office of the Comptroller. These forms were due to the Comptroller on August 22, 2003. We also maintain that DNS did not respond to Comptroller inquiries in a timely manner as stated in the finding. Although the CFDA number correction to the GAAP reporting package forms cited in the agency's response was not a subject of the finding, the correction made to the CFDA number was necessary for proper reporting.

We also believe that for a supervisory review of the GAAP reporting package forms to be effective someone other than the original preparer should perform the review. We welcome the agency's response that they will take extra efforts toward accurate and timely submissions of GAAP reporting package forms to the Office of the State Comptroller.

Accepted

- 1. Implement a method to obtain the required information concerning the transport of low-level radioactive waste in a timely manner. Seek a legislative remedy to the statutory requirement if compliance is impossible.**

Findings: Nuclear Safety has not incorporated information required by statute into their applications for permits to allow individuals to transport low-level radioactive waste (LLRW). The law states that each application for a permit shall contain the following:

- The estimated quantities and types of wastes to be transported to a facility located in Illinois;
- The procedures and methods used to monitor and inspect the shipments to ensure that leakage or spills do not occur;
- The timetables according to which the wastes are to be shipped;
- The qualification and training of personnel handling low-level radioactive waste; and
- The use of interim storage and transshipment facilities.

Accepted - continued

A random sample of 25 applications contained none of the required elements. According to Nuclear Safety personnel, it would be impossible for the applicants to know the required information at the time that the application is being completed.

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Response: Accepted. The agency accepted the recommendation and will seek a legislative remedy to remove these unattainable requirements.

When the Agency's regulations were developed, the goal was to create a program that would be easy for the shippers to comply with while trying to meet the intentions of the Act. Rather than establish a permit system that would require the shipper to renew their permits each year, it was decided that a system that issued permits that didn't expire would be more shipper friendly. The decision thereby precludes the Agency from collecting the data required in the law. Most shippers will not know, with any certainty, their shipping schedules (including waste types and quantities) years in advance.

There is only one facility in Illinois that receives waste generated by others. This broker has strict possession limits that preclude it from receiving large quantities of waste. Other than waste that is decayed in storage, waste can only remain at that facility for six months.

It was also determined that the data requested in the law are already addressed in the shipper's radioactive materials license. Collecting this information would be an unnecessary duplication of reporting for the shippers.

The law also requires the permit applicant to identify the use of interim storage and transshipment facilities. First, there are no interim storage facilities located in Illinois or anywhere. Second, transshipment facilities are not a concern since most LLRW is shipped as exclusive use, meaning the shipment will not stop at a transshipment facility. Those shipments that are not shipped as "exclusive use" are usually transported by a broker making a 'milk run' that will not result in the use of a transshipment facility. In addition, the shipper would not know about the use of a transshipment facility since that is a carrier-determined practice that the shipper has no control over (except for the designation of exclusive use).

The Agency will seek a legislative remedy to remove these unattainable requirements.

3. Obtain an opinion from the Attorney General concerning whether a lump sum payment is exempt from the statute.

Findings: Nuclear Safety did not seek repayment from an employee who received a single lump sum payment of \$48,299 of accrued vacation and sick leave upon retirement when the individual returned to work with Nuclear Safety two days after his early retirement.

According to 30 ILCS 105./14a(c), if an *"employee returns to employment in any capacity with the same agency or department within 30 days of the termination of his or her previous State Employment, the employee must, as a condition of his or her new State employment, repay the lump sum amount within 30 days after employment commences."*

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According to the Nuclear Safety personnel, repayment was not required. The individual's salary is now paid from an appropriation for State officers by the Comptroller. Nuclear Safety claims the person is a State officer, not an employee, and not subject to the repayment provision.

Response: Not Accepted. We neither accept nor reject the recommendation set forth in Finding 03-3. We do not believe that the lump sum payment was exempt from the Act. We believe the payment was authorized under 30 ILCS 105/14d.

The annuitant took normal retirement having 30 years of State employment and being 60 years of age. The annuitant was appointed by the Governor and confirmed with the advice and consent of the Senate to the position of Director of the Department of Nuclear Safety. In accepting this appointment, the annuitant was required to resign from his State employee status.

Auditors' Comments: At issue is whether a lump sum payment of \$48,299 of State funds needs to be repaid to the State pursuant to the State Finance Act. While the Comptroller's Office believed that repayment may not be required, the Office indicated it would defer to the Attorney General for an official interpretation. In light of the complicated circumstances presented in the finding, we continue to recommend that the agency seek a formal, written opinion from the Attorney General to determine whether it has any obligation to recoup State funds paid out from appropriations.

Updated Response: On April 5, 2004, Nuclear Safety requested an opinion of the Attorney General concerning this finding.

4. Direct the individual to return any retirement annuity payments received since July 1, 2003 to the State pension system or seek legislative remedy confirming his current position as a State Officer with the advice and consent of the Senate.

Findings: The former Director of the Department of Nuclear Safety was transferred to a new position on July 1, 2003 at the Illinois Emergency Management Agency. This new position did not require the advice and consent of the Senate. The former Director continues to receive retirement annuity payments prohibited by the Pension Code.

An individual retired from the Department of Nuclear Safety on February 14, 2003 and began receiving retirement annuity payment from SERS on April 3, 2003. On February 16, 2003, he was appointed Director of the Department of Nuclear Safety and was confirmed by the Senate on February 28, 2003. At the time of his appointment

Accepted – concluded

as Director, which is a State Officer, the individual elected not to participate in SERS in his new position. However, he continued to draw a pension from SERS related to his prior position.

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Subsequently, by operation of Executive Order #12, effective July 1, 2003, the Department of Nuclear Safety was abolished and its functions moved to the Emergency Management Agency. The Executive Order states that "the Director of Nuclear Safety shall be transferred to IEMA and be made the Assistant Director of IEMA." Neither the transfer nor the position was subject to the advice and consent of the Senate.

The Pension Code prohibits an annuitant who re-enters the service of a department and receives compensation on a regular payroll from simultaneously receiving a retirement annuity. However, under the Pension Code, the term employee does not include a person appointed by the Governor with the advice and consent of the Senate unless that person elects to participate in SERS.

Updated Response: Accepted. Senate Bill 3201, which codifies each of the provisions of Executive Order #12, was passed by both houses of the General Assembly and sent to the Governor on June 28, 2004. In that legislation, Section 45 specifically addresses the position of appointment of the Assistant Director for Emergency Management and makes that position appointed by the Governor with the advice and consent of the Senate.

Auditors' Comments: Although the substance of this issue relates to the period beginning July 1, 2003, it results from reorganization undertaken pursuant to an Executive Order issued during the current audit period. Further we believed the issue was too important to defer until the next biennial audit. We disagree with the agency's contention that neither DNS nor its successor has any responsibility to ensure payroll payments to persons working for DNS or its successor are legal and proper.

We believe that the fact the Comptroller continued to pay the individual's salary from the State Officer's appropriation and the fact that the individual was originally confirmed to a two-year term appointment are not relevant to the issue at the heart of this finding. We stand behind the facts as stated in the finding that the individual, in his current position, as Assistant Director IEMA had not been confirmed to the position with the advice and consent of the Senator and, therefore the legality of his simultaneous receipt of both payroll and pension payments is questionable. We welcome the agency's acceptance of our recommendation to seek a legislative remedy.

5. Implement a system to insure monitoring and completion of timely evaluations.

Findings: Nuclear Safety did not perform employee evaluations in a timely manner as required. Twenty-nine of 50 employees tested did not receive timely evaluations.

Response: Accepted. Agency plans to introduce the following procedure:

- For both code and non-code employees we will generate notices of upcoming evaluations at least five weeks prior to the due date of the evaluation. These notices will then be sent to the evaluating supervisor.

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- Tracking will begin with the first notice that an evaluation is due. The Bureau of Personnel will track the timeliness of the return of personnel evaluations from the appropriate bureau. A delinquent notice will be generated to the Bureau Chief if two weeks have passed from the due date of an evaluation. If two weeks after that, the evaluation is still delinquent, it will be brought up at senior staff meeting.

Emergency Purchases

The Illinois Purchasing Act (30 ILCS 505/1) states, "The principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts..." The law also recognizes that there will be emergency situations when it will be impossible to conduct bidding. It provides a general exemption for emergencies "involving public health, public safety, or where immediate expenditure is necessary for repairs to State property in order to protect against further loss of or damage ... prevent or minimize serious disruption in State services or to insure the integrity of State records. The chief procurement officer may promulgate rules extending the circumstances by which a purchasing agency may make 'quick purchases', including but not limited to items available at a discount for a limited period of time."

State agencies are required to file an affidavit with the Auditor General for emergency procurements that are an exception to the competitive bidding requirements per the Illinois Purchasing Act. The affidavit is to set forth the circumstance requiring the emergency purchase. The Commission receives quarterly reports of all emergency purchases from the Office of the Auditor General. The Legislative Audit Commission is directed to review the purchases and to comment on abuses of the exemption.

During FY03 the Department filed one affidavit for an emergency purchase totaling \$70,000 for potassium iodide tablets for potential distribution to citizens living or working near nuclear power plants in the event of a nuclear power plant accident or other radiological incident.

Headquarters Designations

The State Finance Act requires all State agencies to make semiannual headquarters reports to the Legislative Audit Commission in January and July. Each State agency is required to file reports of all its officers and employees for whom official headquarters have been designated at any location other than that at which official duties require them to spend the largest part of their working time.

The Illinois Department of Nuclear Safety indicated as of October 2003, ten employees spent the majority of working time at a location other than official headquarters.