



Washington State Auditor's Office

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Whistleblower Investigation Report Department of Agriculture

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December 31, 2015

Derek Sandison, Director
Department of Agriculture

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 15-041 at the Department of Agriculture.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

TROY KELLEY
STATE AUDITOR
OLYMPIA, WA

cc: Mr. Mark Johnson, Chief Financial Officer
Governor Jay Inslee
Kate Reynolds, Executive Director, Executive Ethics Board
Justin Brackett, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and results

Our Office received a complaint asserting two managers at the Department of Agriculture (Department) were instructing weights and measures inspectors to affix seals of approval to commercial motor vehicle refueling pumps (gas pumps) that had not been tested and inspected, as required by law. The complaint asserted the seal led consumers to falsely believe each device had been tested and inspected.

We found no reasonable cause to believe an improper governmental action occurred.

Background

State law allows the Department to issue an official seal of approval for each weighing or measuring instrument or device that has been tested and inspected and found to be correct.

In July 2013 the Department implemented a sample-based gas pump examination policy and approval seal. The policy states that all dispensers at a gas station will be inspected and a sample of the total meters will be tested. If no errors are found, approval seals are affixed to the outside of all dispensers at the gas station. The new seal states:

Dispensers Approved and Sampled Meters Tested

The complaint alleged the new policy conflicted with the law because it ordered the application of seals to all gas pumps without necessarily testing the meters inside.

Gas pumps contain two separate devices - dispensers and meters. Dispensers deliver the gas to the consumer's gas tank and the meters measure the amount of fuel dispensed. Each dispenser can contain between one and eight meters that measure the various types of fuel available.

Dispensers and meters require different examinations to determine accuracy. The dispenser is visually inspected to determine if it is in good working order. Meters are tested to determine if the amount of fuel dispensed correctly corresponds with the amount displayed to the consumer.

About the Investigation

We conducted interviews, reviewed applicable laws and rules, and consulted with the Assistant Attorney General (attorney) who advises the Department.

The attorney explained that although the law states the Department “may issue a seal of approval” to a device, it does not state that it is a requirement. Because a gas pump contains two separate devices, the Department has chosen to issue a seal for the dispenser only.

He said the law requires the Department to examine a “sufficient number” of devices, but it does not prohibit sampling as a means of fulfilling the requirement, nor does it prohibit the Department from including this information on the seal.

The weights and measures program manager said that in the past inspectors would only affix seals to pumps when the dispenser and all the meters inside had been inspected, tested and found to be correct. He said this practice could be very time-consuming depending on the size of the gas station. Considering the number of gas stations in the state, testing every meter was not a viable means of ensuring state-wide accuracy. He said the sampling policy was adopted to better allocate the Department’s resources and expand its regulatory presence.

State Auditor’s Office Concluding Remarks

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 19.94.163 Testing by department — Ensuring enforcement — Issuance of seal of approval — Exception.

- (1) Except as provided in subsection (3) of this section and RCW 19.94.190(1)(d), the department shall test and inspect each biennium a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced.
- (2) The department may issue an official seal of approval for each weighing or measuring instrument or device that has been tested and inspected and found to be correct.