

**Washington State Auditor's Office**  
**Whistleblower Investigation Report**

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**Department of Ecology**

**Report No. 1010084**

**Issue Date**  
**July 8, 2013**



WASHINGTON  
**TROY KELLEY**  
STATE AUDITOR



**Washington State Auditor  
Troy Kelley**

July 8, 2013

Maia D. Bellon, Director  
Department of Ecology

***Report on Whistleblower Investigation***

Attached is the official report on Whistleblower Case No.13-020 at the Department of Ecology.

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 Senior Investigator Sandra Miller at (360) 902-0378 or Whistleblower Manager Troy Niemeyer at (360) 725-5352.

Sincerely,

**TROY KELLEY**  
STATE AUDITOR

cc: Christopher Parsons, Human Resources Director  
Melanie de Leon, Executive Director, Executive Ethics Board

# Whistleblower Investigation Report

## State of Washington Department of Ecology

### **ABOUT THE INVESTIGATION**

We received a complaint alleging a spill responder with the Department of Ecology was also going to school to become a massage therapist. The training requirements included giving a certain number of practice massages. The subject gave these massages to other Ecology employees on state property and on state time.

### **ASSERTION**

An employee with the Department of Ecology is using state time and resources to conduct a personal business.

### **RESULTS**

We obtained a copy of the subject's hard drive, Outlook email history and monthly time summaries for the period of January 2012 through December 2012. Most of the subject's Internet history was not available as the subject was issued a new laptop computer in November and her previous laptop had been cleaned. As a result, we only reviewed Internet history for November and December 2012.

#### Internet

We reviewed the subject's Internet history and found the subject searched social networking sites. In addition, she searched music, airlines, cooking and her own personal email account. This violates the Agency's policy and is therefore a state ethics violation.

#### Email

We found, through our review, the subject sent 406 personal email messages. Of these, 271 were related to her personal massage business. The remaining 135 were personal messages between the subject, other employees and her spouse, who is also an employee of the Agency. These email messages related to their finances, travel, purchases, etc. Some of the messages between the subject and other employees or her spouse contained an Internet link or attachment that was also of a personal nature. This activity exceeds de minimis and is therefore a state ethics violation.

#### Personal Business

The subject is attending school to become a massage therapist. She is required to practice a set number of hours on other people to obtain a license. The subject practiced, free of charge, during the day, on other employees of the Agency. Through review of the subject's email, we determined approximately how many hours were used to give these massages. The subject used the state Outlook system to schedule appointments with other employees for the sole purpose of giving them a massage during the day in the Department of Ecology Health Wellness Room. These massages

ranged anywhere from one-half hour to one and one-half hours. The subject stated in an email message she needed fifteen minutes to set up before each massage. However, the subject stated she said that so she would have extra time. The subject advised she set up in the morning when she arrived to work so it only took a couple of minutes before a massage to get everything ready.

The following chart shows approximately how many hours were used for this activity during the 12 months we examined.

**Approximate total of massage appointments  
For the time period January through December 2012**

Month	Days	Massages	Time	Personal Email	Message Email
January	1	1	1 Hour	0	0
February	0	0	0 Hours	0	0
March	1	1	0.5 Hours	0	0
April	7	7	6.5 Hours	0	7
May	7	7	7 Hours	11	20
June	5	5	4.45 Hours	39	44
July	2	2	3 Hours	9	16
August	11	13	15 Hours	44	41
September	9	9	10 Hours	41	36
October	9	10	11 Hours	41	52
November	7	7	9.5 Hours	41	45
December	5	5	7.5 Hours	9	10
<b>TOTAL</b>	<b>64</b>	<b>67</b>	<b>85.45</b>	<b>135</b>	<b>271</b>

The subject used approximately 85.45 hours of state time to give massages to other Agency employees.

This does not include the time related to 271 email messages the subject sent and responded to regarding massages. This use exceeds de minimis and is a violation of the state ethics law.

Further, we found four emails in which the subject and her coworkers discussed becoming paying customers of the massage business the subject planned to open after obtaining her license. Use of the agency outlook email system for purposes related to a personal business is prohibited by the state ethics law.

## Conclusion

We found reasonable cause to believe an improper governmental action occurred.

We will forward our conclusions to the Executive Ethics Board to take enforcement action as it determines necessary.

## **AGENCY'S PLAN OF RESOLUTION**

*Since the subject of the original Whistleblower complaint left the Department of Ecology before the investigation and the report was completed, the focus of our proposed plan of resolution is on reaffirming that the Department of Ecology and its staff understand the requirements for the appropriate use of the state resources.*

*The three elements of our proposed plan of resolution are as follows:*

- 1. The Agency will communicate with the management staff in our Northwest Regional Office who was responsible for the supervision of the employee who was the subject of the complaint and the Regional Business Administrator who has oversight for the facility to clarify the agency's expectations for, and limitations on, the use of office facilities for private purposes.*
- 2. The Agency will develop a scenario example based on the fact pattern of this case that will be added to Attachment A of Ecology's Executive Policy 15-01, Prohibiting Private Use of State Resources, to provide supervisors and employees with a ready reference regarding the use of facilities for private purposes, as distinct from approved agency wellness program activities.*
- 3. The Agency will issue an agency-wide reminder regarding the agency's de minimis standard for personal use of the agency's e-mail and Internet service.*

*The Department of Ecology has a robust ethics program and a firm commitment to educating and guiding our workforce in complying with the state Ethics in Public Service Law. Ecology has a strong set of policies for this purpose some of which are referenced in the report. As part of our core training requirements, we have one of the more innovative and effective training programs in state government.*

*We take Whistleblower and ethics complaints very seriously and hope that our proposed plan of resolution will address the issues and concerns raised in the investigation and report.*

## **STATE AUDITOR'S OFFICE REMARKS**

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

# Whistleblower Investigation Criteria

## State of Washington Department of Ecology

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

RCW 42.52.160, Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody for the private benefit or gain of the officer, employee, or another.

(2) The following are permitted uses:

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

(i) There is little or no cost to the state;

(ii) Any use is brief;

(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties

(5) Prohibited uses.

(a) Any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain . . .

(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy . . . .

Department of Ecology Executive Policy 15-01 Ethics/Use of State Resources.

(2) . . . Employees may make occasional, but limited "de minimis" use of certain state resources if each of the following conditions is met:

c. Any use occurs infrequently.

(5) Personal use of state resources is strictly prohibited for certain activities.

Prohibited uses include the following:

A. Promoting, conducting, or participating in an outside business or commercial enterprise of any kind.

L. Accessing networks, chat room, or bulletin boards for personal, non-agency related purposes.

M. Accessing and using personal blogs or social networking sites such as "MySpace," Facebook," "LinkedIn," or any dating sites, for personal, non-agency-related purposes.

## Contacts

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