

North Dakota
Department of Health
BISMARCK, NORTH DAKOTA

Audit Report

For the Biennium Ended
June 30, 2013

ROBERT R. PETERSON
STATE AUDITOR



Office of the State Auditor
Division of State Audit

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STATE OF NORTH DAKOTA
OFFICE OF THE STATE AUDITOR
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BISMARCK, NORTH DAKOTA 58505

Transmittal Letter

April 1, 2014

The Honorable Jack Dalrymple, Governor
Members of the North Dakota Legislative Assembly
Dr. Terry Dwelle, State Health Officer, North Dakota Department of Health

We are pleased to submit this audit of the North Dakota Department of Health for the biennium ended June 30, 2013. This audit resulted from the statutory responsibility of the State Auditor to audit or review each state agency once every two years. The same statute gives the State Auditor the responsibility to determine the contents of these audits.

In determining the contents of the audits of state agencies, the primary consideration was to determine how we could best serve the citizens of the state of North Dakota. Naturally we determined financial accountability should play an important part of these audits. Additionally, operational accountability is addressed whenever possible to increase efficiency and effectiveness of state government.

The in-charge auditor for this audit was Michael W. Schmitcke, CPA. Paul Welk, CPA, was the audit manager. Inquiries or comments relating to this audit may be directed to the audit manager by calling (701) 328-2241. We wish to express our appreciation to Dr. Dwelle and his staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bob Peterson".

Robert R. Peterson
State Auditor

Executive Summary

Introduction

The North Dakota Department of Health is dedicated to ensuring North Dakota is a healthy place to live and that each person has an equal opportunity to enjoy good health. The Department of Health is committed to improving the health status of the people of North Dakota, improving access to and delivery of quality health care, preserving and improving the quality of the environment, promoting a state of emergency readiness and response, and achieving strategic outcomes with available resources.

The Legislative Audit and Fiscal Review Committee (LAFRC) requests that certain items be addressed by auditors performing audits of state agencies. Those items and the Office of the State Auditor's responses are noted below.

Responses to LAFRC Audit Questions

1. What type of opinion was issued on the financial statements?

Financial statements were not prepared by the North Dakota Department of Health in accordance with generally accepted accounting principles so an opinion is not applicable. The agency's transactions were tested and included in the state's basic financial statements on which an unmodified opinion was issued.

2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?

Other than our findings addressing "lack of annual performance evaluations" (page 14) and "inadequate food establishment inspection process" (page 16, 2nd bullet), the North Dakota Department of Health was in compliance with significant statutes, laws, rules, and regulations under which it was created and is functioning.

3. Was internal control adequate and functioning effectively?

Yes.

4. Were there any indications of lack of efficiency in financial operations and management of the agency?

Other than our work addressing the Food Inspection Program (pages 16-27) and the Underground Storage Tank Program (pages 27-30), there were no indications of a lack of efficiency in financial operations and management of the North Dakota Department of Health.

5. Has action been taken on findings and recommendations included in prior audit reports?

There were no recommendations included in the prior audit report.

6. *Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.*

Yes, a management letter was issued and is included on page 31 of this report, along with management's response.

LAFRC Audit Communications

7. *Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.*

There were no significant changes in accounting policies, no management conflicts of interest were noted, no contingent liabilities were identified or significant unusual transactions.

8. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

The North Dakota Department of Health's financial statements do not include any significant accounting estimates.

9. *Identify any significant audit adjustments.*

Significant audit adjustments were not necessary.

10. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

None.

11. *Identify any serious difficulties encountered in performing the audit.*

None.

12. *Identify any major issues discussed with management prior to retention.*

This is not applicable for audits conducted by the Office of the State Auditor.

13. *Identify any management consultations with other accountants about auditing and accounting matters.*

None.

14. Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.

ConnectND Finance, Human Resource Management System (HRMS), WICNet System, Inventory Control System, and Program Reporting System (PRS) are high-risk information technology systems critical to the North Dakota Department of Health.

Audit Objectives, Scope, and Methodology

Audit Objectives

The objectives of this audit of the North Dakota Department of Health for the biennium ended June 30, 2013 were to provide reliable, audited financial statements and to answer the following questions:

1. What are the highest risk areas of the North Dakota Department of Health's operations and is internal control adequate in these areas?
2. What are the significant and high-risk areas of legislative intent applicable to the North Dakota Department of Health and are they in compliance with these laws?
3. Are there areas of the North Dakota Department of Health's operations where we can help to improve efficiency or effectiveness?

Audit Scope

This audit of the North Dakota Department of Health is for the biennium ended June 30, 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The North Dakota Department of Health has operations in the following locations which will be included in the audit scope:

- The central office located in the State Capitol building.
- The following divisions are at 2635 East Main – Bismarck, ND:
 - Laboratory Services (Chemistry and Microbiology)
 - Disease Control
 - Medical Examiner
- The following divisions are at 918 East Divide – Bismarck, ND:
 - Environmental Health Section
 - Division of Air Quality
 - Division of Municipal Facilities
 - Division of Waste Management
 - Division of Water Quality
 - Environmental Chief's Office
 - Emergency Preparedness and Response Section
- The Hospital Preparedness Section is located in the Dakota Building - 4th and Broadway, Bismarck, ND.

Audit Methodology

To meet the objectives outlined above, we:

- Prepared financial statements from the legal balances on the state's accounting system tested as part of this audit and the audit of the state's Comprehensive Annual Financial Report and developed a discussion and analysis of the financial statements.
- Performed detailed analytical procedures including computer-assisted auditing techniques. These procedures were used to identify high-risk transactions and potential problem areas for additional testing.
- Tested internal control and compliance with laws and regulations which included selecting representative samples to determine if controls were operating effectively and to determine if laws were being followed consistently. Non-statistical sampling was used and the results were projected to the population. Where applicable, populations were stratified to ensure that particular groups within a population were adequately represented in the sample, and to improve efficiency by gaining greater control on the composition of the sample.
- Interviewed appropriate agency personnel.
- Queried the ConnectND (PeopleSoft) system. Significant evidence was obtained from ConnectND.
- Observed the North Dakota Department of Health's processes and procedures.
- Performed a detailed review of the Food Inspection Program and Underground Storage Tank Program operated by the Department including:
 - Established policies and procedures;
 - Qualifications of staff;
 - Licensing;
 - Inspections;
 - Complaint handling;
 - Enforcement processes; and
 - Management analysis processes.

In aggregate there were no significant limitations or uncertainties related to our overall assessment of the sufficiency and appropriateness of audit evidence.

Discussion and Analysis

The accompanying financial statements have been prepared to present the North Dakota Department of Health's revenues and expenditures on the legal (budget) basis. The accompanying financial statements are not intended to be presented in accordance with generally accepted accounting principles (GAAP).

For the biennium ended June 30, 2013, operations of the North Dakota Department of Health were primarily supported by federal funding. This is supplemented by appropriations from the state's general fund and fees credited to the agency's operating fund.

Financial Summary

Revenues consisted primarily of federal funds. Other revenues during the audited period included tobacco settlement funds, various rebates, licenses, permits, fines, and fees. Fines revenue increased in the second half of the biennium due to increased enforcement activity in oil impacted areas of the state. All other revenues remained fairly constant for the North Dakota Department of Health. Total revenues were \$61,332,668 for the year ended June 30, 2013 as compared to \$57,048,320 for the year ended June 30, 2012.

Expenditures consisted primarily of grants, salaries, and WIC (women, infants, and children program) payments. Total expenditures for the North Dakota Department of Health were \$80,330,273 for the year ended June 30, 2013 as compared to \$70,061,005 for the prior year. The following contributed to the overall increase for expenditures in the second half of the biennium:

- The increase in grant expenditures is the result of a number of projects being initiated during the first year of the biennium with the majority of the progress and expenditures being incurred in the second year.
- Payments for fees—professional services increased due to several grants being received by the North Dakota Department of Health which resulted in additional payments being made to local public health units, North Dakota State University, and the University of North Dakota.
- Medicine and drug purchases increased as a result of the tuberculosis outbreak in the Grand Forks area.
- The increase in expenditures for salaries and benefits reflected general salary increases.

Analysis of Significant Variances - Budgeted and Actual Expenditures

The excess of operating expenses appropriations over actual expenditures was the result of the North Dakota Legislature's plan to purchase vaccines for the state at reduced costs under federal contract. The North Dakota Legislature decided not to pursue this plan during the biennium but left the appropriation authority intact.

The excess appropriation in the grants line item was the result of the following:

- Less monies being spent in the Arsenic Trioxide program and the Nonpoint program;
- The Department did not receive an anticipated grant from the Department of Justice for visitation centers;
- The budget was developed based on amounts the North Dakota Department of Health anticipated receiving, however, grant awards came in less; and
- Grants issued to colleges, associations, and individuals were spent at a lower level than awarded.

The remaining amount in the WIC Food Payments line item was the result of the North Dakota Department of Health anticipating an increase in food costs that did not occur, along with the number of participants being less than what was anticipated when the budget was built.

Financial Statements

Statement of Revenues and Expenditures

	<u>June 30, 2013</u>	<u>June 30, 2012</u>
<u>Revenues and Other Sources:</u>		
Federal Revenue	\$ 45,708,901	\$ 44,324,218
WIC/Medication Rebates	3,024,284	2,481,818
Fines	2,126,755	206,106
Licenses, Permits, and Fees	1,670,890	1,153,697
Air Pollution Construction Permits	1,632,548	1,542,880
Water Sample Analysis Fees	631,929	1,169,826
Vital Records – Service Fees	536,469	510,412
Health Facilities Licensing Fees	170,022	165,778
Other Revenue	632,347	429,669
Transfer from Tobacco Settlement Fund	2,011,289	2,012,722
Other Transfers In	3,187,234	3,051,194
Total Revenues and Other Sources	\$ 61,332,668	\$ 57,048,320
<u>Expenditures and Other Uses:</u>		
Grants	\$ 26,428,458	\$ 22,447,284
Salaries and Benefits	24,097,820	22,857,189
Food Supplies (WIC)	9,152,705	9,091,695
Fees – Professional Services	6,650,987	5,447,817
IT – Services/Processing/Equipment	2,930,252	2,260,675
Medicine and Drugs	2,243,532	995,201
Lab/Emergency Supplies	1,306,530	1,453,754
Travel	1,184,902	1,119,074
Rent of Building Space	910,797	851,593
Equipment	780,211	210,512
Advertising	596,416	36,972
Repairs	578,727	370,318
Supply/Material – Professional	454,826	372,432
Bond Payments	336,781	335,564
Other Expenditures	1,855,979	1,623,957
Transfers Out	821,350	586,968
Total Expenditures and Other Uses	\$ 80,330,273	\$ 70,061,005

Statement of Appropriations

For The Biennium Ended June 30, 2013

Expenditures by Line Item:	<u>Original Appropriation</u>	<u>Adjustments</u>	<u>Final Appropriation</u>	<u>Expenditures</u>	<u>Unexpended Appropriation</u>
Salaries and Wages	\$ 49,351,659	\$ 271,449	\$ 49,623,108	\$ 45,733,649	\$ 3,889,459
Operating Expenses	50,272,030	134,865	50,406,895	27,884,984	22,521,911
Capital Assets	1,998,073		1,998,073	1,654,993	343,080
Grants	58,528,038		58,528,038	47,719,746	10,808,292
Tobacco Prevention & Control	6,162,396		6,162,396	5,485,311	677,085
WIC Food Payments	24,158,109		24,158,109	18,097,955	6,060,154
Contingent Appropriation	864,371	300,000	1,164,371	717,570	446,801
Federal Stimulus Funds - 2009	3,492,228		3,492,228	2,789,336	702,892
Totals	<u>\$194,826,904</u>	<u>\$ 706,314</u>	<u>\$195,533,218</u>	<u>\$150,083,544</u>	<u>\$ 45,449,674</u>
Expenditures by Source:					
General Fund	\$ 33,878,151	\$ 706,314	\$ 34,584,465	\$ 32,943,377	\$ 1,641,087
Other Funds	160,948,753		160,948,753	117,140,166	43,808,587
Totals	<u>\$194,826,904</u>	<u>\$ 706,314</u>	<u>\$195,533,218</u>	<u>\$150,083,544</u>	<u>\$ 45,449,674</u>

Appropriation Adjustments:

The \$271,449 increase to the Salaries and Wages line consisted of the following adjustments:

- \$145,449 – Approved by the Emergency Commission to authorize three FTE for the Environmental Health Section related to water quality, wastewater disposal and treatment, and spill/remediation response.
- \$126,000 – Authorized by House Bill 1023, section 1 of the 2013 Legislative Session, increased spending authority for the Division of Food and Lodging to handle additional workload related oil activity in the northwestern part of the state.

The \$134,865 increase to the Operating Expenses line was approved by the Emergency Commission and was for the same purpose as noted in the 1st bullet above.

The \$300,000 increase to the Contingent Appropriation line was authorized by House Bill 1023, section 1 of the 2013 Legislative Session for the purpose of defraying expenses associated with legal action against the U.S. Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

Expenditures Without Appropriations Of Specific Amounts:

Transfers out of the Abandoned Vehicle Fund have a continuing appropriation authorized by North Dakota Century Code (NDCC) section 39-26-12 (\$253,186 of transfers for this biennium).

The Statewide Conference Fund is nonappropriated in accordance with OMB policy 211 (\$13,094 of expenditures this biennium).

The Organ/Tissue Transplant Fund has a continuing appropriation authorized by NDCC section 23-01-05.1 (\$22,219 of expenditures for this biennium).

The Environmental Quality Restoration Fund has a continuing appropriation authorized by NDCC section 23-31-02 (\$19,443 of expenditures for this biennium).

The Insurance Recoveries Property Fund has a continuing appropriation authorized by NDCC section 54-44.1-09.1 (\$162 of expenditures for this biennium).

Internal Control

In our audit for the biennium ended June 30, 2013, we identified the following areas of the North Dakota Department of Health's internal control as being the highest risk:

Internal Controls Subjected to Testing:

- Controls surrounding the processing of revenues.
- Controls surrounding the processing of expenditures.
- Controls effecting the safeguarding of assets.
- Controls surrounding inventory.
- Controls relating to compliance with legislative intent.
- Controls surrounding the ConnectND (PeopleSoft) system.

The criteria used to evaluate internal control is published in the publication *Internal Control – Integrated Framework* from the Committee of Sponsoring Organizations (COSO) of the Treadway Commission.

We gained an understanding of internal control surrounding these areas and concluded as to the adequacy of their design. We also tested the operating effectiveness of those controls we considered necessary based on our assessment of audit risk. We concluded internal control was adequate.

Auditors are required to report deficiencies in internal control that are significant within the context of the objectives of the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect: (1) misstatements in financial or performance information; (2) violations of laws and regulations; or (3) impairments of effectiveness or efficiency of operations, on a timely basis. Considering both qualitative and quantitative factors, we did not identify any significant deficiencies in internal control. However, we noted other matters involving internal control that we have reported to management of the North Dakota Department of Health in a management letter dated April 1, 2014.

Compliance With Legislative Intent

In our audit for the biennium ended June 30, 2013, we identified and tested the North Dakota Department of Health's compliance with legislative intent for the following areas we determined to be significant and of higher risk of noncompliance:

- Compliance with appropriations of \$50,000 to produce geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies (House Bill 1297, section 16 of the 2011 Legislative Session).
- Compliance with appropriations of \$272,310 from the environment and rangeland protection fund including \$50,000 for a North Dakota Stockmen's Association environmental services program grant (House Bill 1004, section 3 of the 2011 Legislative Session).
- Compliance with appropriations of \$425,000 to continue the safe havens supervised visitation and exchange program (House Bill 1004, section 4 of the 2011 Legislative Session).
- Compliance with appropriations of \$500,000 from the general fund to defray expenses of litigation involving the U.S. Environmental Protection Agency (House Bill 1004, section 5 of the 2011 Legislative Session).
- Compliance with appropriations of \$100,000 from the general fund for the support of the comprehensive state trauma system (House Bill 1266, section 2 of the 2011 Legislative Session).
- Compliance with appropriations of \$1,500,000 from the general fund for funding the program through which the department purchases vaccines through the federal vaccine purchasing contract (Senate Bill 2276, section 3 of the 2011 Legislative Session).
- Compliance with appropriations of \$155,000 from the Health Care Trust Fund for the purpose of one-time costs to establish a nurse aide registry (House Bill 1041, section 8 of the 2011 Legislative Session).
- Compliance with appropriations of \$130,000 to maintain a nurse aide registry (House Bill 1041, section 7 of the 2011 Legislative Session).
- Proper disposition of revenue collected by the department for nurse aide registry fees (House Bill 1041, section 1 of the 2011 Legislative Session).
- Compliance with 10% administrative cap related to the Domestic Violence Prevention Fund (NDCC 14-07.1-17).
- Proper disposition of revenue collected by the counties for consumer protection services and of funds accepted by the North Dakota Department of Health for contract services (NDCC 19-01-07).
- Proper use of the following legally restricted funds:
 - Abandoned Motor Vehicle Disposal Fund
 - Organ/Tissue Transplant Fund
 - Environmental Quality Restoration Fund
 - Environmental Health Practitioner Licensure Fee Administrative Fund
 - North Dakota Health Care Trust Fund
 - Community Health Trust Fund

- Wastewater Operators Certification Fund
- Environmental and Rangeland Protection Fund
- Domestic Violence Prevention Fund
- Proper use of the State Treasurer (State Constitution, article X, section 12).
- Compliance with appropriations and related transfers (2011 North Dakota Session Laws chapter 4).
- Compliance with OMB's Purchasing Procedures Manual.
- Travel-related expenditures are made in accordance with OMB policy and state statute.
- Adequate blanket bond coverage of employees (NDCC section 26.1-21-08).
- Compliance with fixed asset requirements including record-keeping, surplus property, lease and financing arrangements in budget requests, and lease analysis requirements.
- Compliance with payroll-related laws including statutory salaries for applicable elected and appointed positions, and certification of payroll.
- Proper use of the Bank of North Dakota as a processing depository for credit card activity (NDCC section 54-06-08.2).

The criteria used to evaluate legislative intent are the laws as published in the *North Dakota Century Code* and the *North Dakota Session Laws*.

Government Auditing Standards require auditors to report all instances of fraud and illegal acts unless they are inconsequential within the context of the audit objectives. Further, auditors are required to report significant violations of provisions of contracts or grant agreements, and significant abuse that has occurred or is likely to have occurred.

The results of our tests disclosed two instances of noncompliance that are required to be reported under *Government Auditing Standards*. One finding is described below and the other is described in the finding titled "inadequate food establishment inspection process" (page 16, 2nd bullet). Other than those findings, we concluded there was compliance with the legislative intent identified above.

Lack of Annual Performance Evaluations (Finding 13-1)

Condition:

The Department of Health does not perform annual performance evaluations of all employees.

Criteria:

North Dakota Administrative Code section 4-07-10-04 requires agencies to perform performance evaluations on an annual basis.

Cause:

The Department indicated that they have been dealing with competing priorities related to energy activity and disease related outbreaks. This has resulted in limited time to complete performance reviews within a twelve month time frame.

Effect or Potential Effect:

The Department lacks support for salary increases given without performance reviews.

Recommendation:

We recommend the Department of Health ensure all employees receive annual performance evaluations in accordance with North Dakota Administrative Code section 4-07-10-04.

Department of Health Response:

The Department agrees. Performance Evaluation Templates have been developed and implemented Department-wide in April 2014 which will assist in the completion of annual performance evaluations.

Operations

Our audit of the Department of Health identified the following areas of potential improvements to operations, as expressed by our operational objectives:

- Is the Food Inspection program implemented by the Department of Health operating efficiently and effectively and in compliance with significant high-risk laws?
- Is the Underground Storage Tank program implemented by the Department of Health operating efficiently and effectively and in compliance with significant high-risk laws?

Inadequate Food Establishment Inspection Process (Finding 13-2)

Condition:

The Division of Food and Lodging (Division) does not have an adequate inspection process for food establishments. The following deficiencies were identified:

- There is no policy or procedure in place stating all inspection criteria for: determining when establishments are “in” and “out” of compliance, types of violations, time to be given for corrective action, and consequences for not taking action.
- Inadequate tracking of the overdue inspection report resulted in 13 inspections not being performed within the two-year timeframe required by North Dakota Century Code section 23-09-11.
- Insufficient documentation of supervisory/management review of inspection results.
- Violations noted during inspections are not properly tracked to ensure all items that need to be corrected are followed up on.
- The inspection checklist currently used by the department does not include all items in the United States Food and Drug Administration (FDA) food inspection checklist example.
- The Department does not sufficiently rotate inspectors.
- The time of inspection is not consistently documented to ensure that inspection time varies.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor’s Association, and Jacobs & Associates – International Consultants in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Additional information was also obtained from the FDA and North Dakota Century Code section 23-09-11 which states that every food establishment must be inspected at least once every two years.

Cause:

The Division does not have adequate policies and procedures in place to ensure the inspection process is handled appropriately.

Effect or Potential Effect:

Public Health could be at risk if legitimate health violations go unnoticed and/or if health violations are not followed up on. The lack of tracking and monitoring procedures for inspections increases the risk of abuse within the inspection process.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging implement an inspection process to ensure all establishment inspections are handled appropriately. Specifically the Department should ensure:

- Policies and procedures are established to identify inspection criteria, specifically: when establishments are "in" and "out" of compliance, types of violations, time to be given for corrective action, and consequences for not taking action.
- All inspections are tracked to ensure they are performed in the two-year timeframe required by North Dakota Century Code section 23-09-11.
- Documented management review of inspection results is performed.
- All inspections that require items to be corrected are tracked and followed up on.
- An inspection checklist is created for every type of establishment inspected that at a minimum includes all elements contained in the FDA example checklist.
- Inspectors are rotated.
- Inspection time is documented and varied between inspections.

Department of Health Response:

The Department agrees. While procedures exist, policies and procedures will be documented. Quarterly listings of establishments and the inspection due dates will be generated. In addition, the Department is currently preparing to purchase a new information management system. A feature in that new system will allow each inspector to generate lists of inspections nearing the two-year mandated time frame or due date and complete the inspections according to state statute. Also, the food inspection form will be updated to model the recommended FDA food inspection form in Annex 7 of the 2013 FDA Model Food Code. The Division will rotate inspectors to the extent possible while staying within the budget allocated for travel.

While the Department concurs with the recommendation we note that the foodborne illness outbreak rate for North Dakota is comparable to the rate for our neighboring states and the U.S. average, indicating that North Dakota residents may be at no more risk than residents of other states.

Inadequate Food Establishment Complaint Handling Process (Finding 13-3)

Condition:

The Division of Food and Lodging (Division) does not have an adequate consumer complaint process. The following weaknesses were identified:

- Inadequate policies and procedures for receiving, recording, evaluating, investigating, resolving, and tracking complaints.
- The public is not provided with a 24-hour complaint hotline or an online avenue to submit complaints.
- Incomplete record of consumer complaints.
- Complaints are not tracked to ensure all complaints are followed up on in a timely and appropriate matter.
- The established complaint form is not used for filing complaints.
- No documented management evaluation of complaint volume per inspector or establishment.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform, focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Additional information was also obtained from the United States Food and Drug Administration (FDA).

Cause:

The Division does not have policies and procedures in place to ensure all areas of the complaint handling process are adequate.

Effect or Potential Effect:

Public Health could be at risk if legitimate public complaints go unheard and/or are not followed up on.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging implement a complaint process to ensure all consumer complaints are handled appropriately. Specifically the Department should ensure:

- Policies and procedures are established for all areas of the complaint process.
- An online avenue or other 24-hour approach to receiving consumer complaints is implemented.
- A process is implemented to record all consumer complaints.
- A tracking or monitoring system is implemented to ensure all complaints are followed up on.
- The established complaint form is used for documenting complaints.
- A management evaluation of complaint volume compared to inspector, establishment, or other industry data is implemented.

Department of Health Response:

The Department agrees. While procedures exist, policies and procedures will be documented for all areas of the complaint process. A complaint logging and tracking system has already been implemented. The new information management system will also allow us to more efficiently log complaints and evaluate complaint volume by inspector and work regions. Enhancements will be made to the Division's links on the Department web site to allow for 24/7 reporting of complaints by the public.

Inadequate Food Inspector Guidance (Finding 13-4)

Condition:

The Division of Food and Lodging (Division) did not have the following inspector guidance materials:

- Annual ethics and conflict of interest acknowledgement by the inspectors.
- New employee training materials or a schedule of training materials to cover.

Criteria:

Government Auditing Standards state "internal control serves as a defense in safeguarding assets and preventing and detecting errors; fraud; noncompliance with provisions of laws, regulations, contracts or grant agreements; or abuse." A strong internal control environment should include a code of conduct/ethics policy that is adhered to.

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state regulatory

program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Cause:

The Division was not following Department policies and procedures to ensure policy acknowledgments and the Division does not have policies and procedures in place to ensure new employee training is documented.

Effect or Potential Effect:

Public Health could be at risk if improperly trained inspectors are allowed to continue performing inspections. Lacking an annual acknowledgment of the conflict of interest and ethics policy increases the risk of fraud or kickbacks occurring.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging ensure:

- Each inspector sign an annual ethics and conflict of interest statement.
- New employee training materials and a schedule of training is established.

Department of Health Response:

The Department agrees. Annual ethics and conflict of interest statement are now being signed and new employee training materials and a scheduled training protocol for in-office and in-field training will be developed.

Insufficient Database Management System for Food Inspections (Finding 13-5)

Condition:

The Division of Food and Lodging (Division) does not have an adequate database management system. The current system does not have the ability to perform edit checks or completeness checks to ensure the validity of data entered. In addition, the system does not track, record, and disseminate all necessary information for:

- Inspector training.
- The license application process.
- Inspections and inspection follow-up.
- Complaints received and complaint follow-up.
- Enforcement measures.
- Follow-up on non-renewed licenses.
- Ensuring all food establishments are subject to inspection.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

The Committee of Sponsoring Organizations (COSO) of the Treadway Commission states that information and communication systems enable the entity's people to identify, capture, and exchange information needed to conduct, manage, and control its operations in a timely manner.

Cause:

Lack of funding to update the database has caused the Division to rely on an outdated system.

Effect or Potential Effect:

Public health could be at risk due to the inefficiencies in the database management system, which could lead to inspections, follow-up inspections, and complaint inspections not being performed. This could also lead to an incomplete population of establishments being inspected, or allowing establishments that did not renew their license to continue operations.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging ensure the information system used contains sufficient edit and completeness checks to ensure the validity of the data entered and will allow the Division to track, record, and disseminate information for all the processes within the Division including:

- Inspector training.
- License applications.
- Inspections and inspection follow-up.
- Complaints received and complaint follow-up.
- Enforcement measures.
- Non-renewed license follow-up.
- Ensuring all food establishments are subject to inspection.

Department of Health Response:

The Department agrees. The new information management system will have the capabilities to sufficiently edit and ensure the validity of data entered which will allow the Division to track, record, and disseminate information for all the purposes identified in this recommendation.

Inadequate Enforcement Process for Food Inspection Violations (Finding 13-6)

Condition:

The Division of Food and Lodging (Division) does not have an adequate enforcement process in place. The following weaknesses were identified:

- The Division does not have documented enforcement policies and procedures for flagging or tracking non-compliant establishments and appealing code violations.
- No specified trigger levels of noncompliance for enforcing their violation levels: dates violations must be corrected by, closing the establishment, and sending issues to the States Attorney.
- No documented tracking of the follow-up needed to ensure compliance.
- Inadequate support documentation showing inspection follow-up was completed.
- No notification to the establishment of the right to appeal a violation.
- No public notice of disciplinary actions found at establishments.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Additional information was also obtained from the United States Food and Drug Administration (FDA).

Cause:

The Division does not have policies and procedures in place to ensure that enforcement actions are handled consistently and appropriately.

Effect or Potential Effect:

Public Health could be at risk if health violations are allowed to go un-enforced or if health violations are not followed up on to ensure compliance. The lack of policies and procedures for enforcing violations increases the risk of abuse within the enforcement process.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging implement an enforcement process to ensure all enforcement actions are handled appropriately. Specifically the Department should ensure that:

- Enforcement policies and procedures are implemented for flagging or tracking of non-compliant establishments and appealing code violations.
- Specified trigger levels for enforcing violations are created and documented for the various enforcement levels including: corrected by dates, closing the establishment, and sending issues to the States Attorney.
- A tracking system is implemented to track the follow-up needed at all establishments to ensure compliance.
- Adequate support documentation is kept to show that follow-up has been performed.
- The establishments are notified of their right to appeal violations
- The public is provided with notice of disciplinary actions taken at all establishments.

Department of Health Response:

The Department agrees. While procedures and processes exist, policies and procedures will be documented. The new information management system will allow us to establish trigger levels, assist us in tracking for timely and effective enforcement, and provide public notification through the Division's links on the Department website.

Inadequate Licensing Process for Food Establishments (Finding 13-7)

Condition:

The Division of Food and Lodging (Division) does not have an adequate licensing process. The following deficiencies were identified:

- Lack of documented licensing policies and procedures for: site plan review, pre-operational inspections, licensing support documentation, and denied applications.
- Sufficient information related to the licensing process is not made available to license applicants through the Department of Health's website.
- Inadequate data retention policies for licensing support documentation including site plan review and approval of initial licensure.
- Inadequate documentation of the follow-up performed on establishments that failed to renew their license.
- No monitoring process in place to identify establishments that are operating without a license and/or to track licensed establishments that should not be operating.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform, focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Additional information was also obtained from the United States Food and Drug Administration (FDA).

Cause:

The Division does not have policies and procedures in place to ensure all areas of the licensing process are adequate.

Effect or Potential Effect:

Public health could be at risk due to food establishments going un-licensed and therefore not regulated by the state.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging implement a licensing process to ensure all licenses are handled appropriately. Specifically the Division should ensure:

- Licensing policies and procedures are established for all areas, including: site plan review, pre-operational inspections, licensing support documentation, and for informing denied applicants.
- Sufficient information related to the licensing process is made available on the Department of Health's website.
- Adequate data retention policies are implemented to include site plan review documents and approval of initial licensure.
- A documented follow up of non-renewed licenses is performed to confirm that the establishment is not operating.
- A monitoring process is implemented to identify establishments operating without a license and to track licensed establishments that should not be operating.

Department of Health Response:

The Department agrees. While procedures exist, policies and procedures will be documented and the Department website will be enhanced to reflect licensing and inspection information. Additionally, the Division is currently in the process of preparing specifications for a new information management system to adequately address this recommendation.

Insufficient Staffing Levels to Properly Operate a Food Inspection Program (Finding 13-8)

Condition:

The Division of Food and Lodging (Division) does not have adequate staffing levels to ensure that inspectors have adequate time to perform thorough inspections using a risk based approach. The Department inspectors averaged 500 inspections per person during calendar years 2011 and 2012, with individual inspectors performing as many as 755 inspections a year. In addition, there is insufficient staffing at a supervisory level to: track, monitor, and approve all Division functions.

Criteria:

The United States Food and Drug Administration (FDA) program standards state that one full time employee should perform between 280-320 inspections per year.

Standard 3 of Annex 5 of the 2013 FDA Model Food Code requires regulatory jurisdictions develop and use a process that groups food establishments into at least three categories based on potential and inherent food safety risks. In addition, Standard 3 requires the regulatory jurisdictions assign inspection frequency based on the risk categories to focus program resources on food operations with the greatest food safety risk. The example provided in Annex 5 by the FDA shows low risk food operations receiving one inspection per year and the highest risk rated entities receiving 4 inspections per year.

Cause:

The Division does not have adequate funding to support the staffing levels necessary.

Effect or Potential Effect:

The Division has not been able to perform a food inspection for all food establishments within the two-year timeframe required by North Dakota Century Code section 23-09-11. In addition, the Division has not been able to comply with the FDA Model Food Code requirements regarding a risk based inspection approach.

Public Health is at risk due to constrained and insufficient inspections being performed on the regulated establishments.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging take the steps necessary to comply with the FDA guidelines regarding staffing levels and implementing a risk based inspection approach. In addition, we recommend the Department ensure sufficient supervisory staffing exists to allow for proper: tracking, monitoring, and approval of all the Division's functions.

Department of Health Response:

The Department agrees. As the Department begins the budget process, the need for additional staff will be considered. The Division has already started implementing a risk-based inspection approach which will be further implemented with an updated and enhanced food inspection form concentrating on foodborne illness risk factors.

Inadequate Memorandums of Understanding and Monitoring of Food Inspections Performed by Local Health Units (Finding 13-9)**Condition:**

The Division of Food and Lodging (Division) does not have adequate Memorandum's of Understanding (MOU) set up with the nine local and city health units. The MOU's do not establish what needs to be performed and how that performance is to be achieved. The Division does not perform adequate monitoring of the local and city health units to ensure that the licensing, inspection, complaint, and enforcement processes are being handled appropriately.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Additional information was also obtained from the United States Food and Drug Administration (FDA).

Cause:

The Division does not have policies and procedures in place to ensure adequate MOU's are entered into and that monitoring of the local and city health units is performed.

Effect or Potential Effect:

Public Health could be at risk due to the lack of oversight of the local and city health units. This lack of oversight offers the Division and the public no assurance over the quality and quantity of work performed. The Division is not able to determine that all establishments are licensed and inspected, that complaints are recorded and followed up on, and that enforcement measures are being handled appropriately. Without monitoring procedures for the local and city health units there is an increased risk of fraud, abuse, bribes, and kickbacks.

Operational Improvement:

We recommend the Department of Health's Division of Food and Lodging:

- Properly establish policies and procedures regarding Memorandum's of Understanding (MOU) with and monitoring of local health units.
- Implement an adequate MOU with each local health unit that establishes what is to be performed and how performance is to be achieved.
- Perform monitoring procedures for all MOU's to ensure that the licensing, inspection, complaint, and enforcement process is being handled appropriately.

Department of Health Response:

The Department agrees. While a process is in place, policies and procedures will be documented and MOU's with local health units will clearly define the roles of each agency. In addition, the new information management system, which many of the local health units will also be a part of, will afford the Division the opportunity to monitor the work being performed by the local health units.

Improvements Needed with Underground Storage Tank Operator Training and Registration Procedures (Finding 13-10)**Condition:**

The Department of Health's Underground Storage Tank program is responsible for training operators and registration of underground storage tanks. The following weaknesses related to the training and registration processes were identified:

- Lack of documented policies and procedures related to the training of underground storage tank operators and registration of tanks.
- Insufficient process in place to identify facilities associated with nonregistered tanks.
- No formal documentation provided to underground storage tank owners detailing the steps of the inspection process from start to finish.
- No monitoring process in place to identify applicants that did not complete the operator training within 30 days after assuming operation and maintenance responsibilities of the underground system.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform, focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Administrative Code section 33-24-08-46, subsection 2 states Class A and B operators must be trained within 30 days after assuming operation and maintenance responsibilities.

Cause:

The Department of Health's Underground Storage Tank program does not have policies and procedures in place to ensure all areas of the training and registration process are adequate.

Effect or Potential Effect:

Public health and the environment could be at risk due to operators not being properly trained and inspections not being timely or not being done.

Operational Improvement:

We recommend the Department of Health's Underground Storage Tank Program implement the following steps to strengthen its current certification process:

- Develop written policies and procedures for all areas of the operator training and registration process.
- Implement a process to identify facilities associated with nonregistered tanks, which could include working closely with fuel supply companies to notify the program when a new tank is being filled.
- Provide documentation to underground storage tank owners detailing the steps of the inspection process from start to finish.
- Implement a monitoring process to identify applicants that did not complete the operator training within 30 days after assuming operation and maintenance responsibilities of the underground system.

Department of Health Response:

The Department agrees. Written policies and procedures are under development and action is being taken to strengthen the current certification process.

Improvements Needed With Underground Storage Tank Inspection Process (Finding 13-11)

Condition:

The Department of Health's Underground Storage Tank program inspects facilities that operate underground storage tank systems. The following weaknesses related to the inspection process were identified:

- No written policies and procedures covering all aspects of the inspection process.
- Annual compliance form guidelines are not available online.
- The Department does not sufficiently rotate inspectors.

- No monitoring process to ensure all annual compliance forms are submitted by the operators.
- Inspection results are only provided to the owner/operator upon request, unless violations occurred.
- Violations, actions taken, and subsequent follow-ups are not consistently tracked.
- Insufficient documentation of supervisory/management review of inspection results.
- In some instances, the initial inspections of new underground storage tanks are not occurring within the first year of operation.

Criteria:

Studies prepared by federal and national organizations including the Centers for Disease Control & Prevention, the National State Auditor's Association, and Jacobs & Associates – International Consultants in Regulatory Reform, focus attention on the importance of identifying and evaluating best practices in executing a state regulatory program to improve regulatory effectiveness in carrying out public policies such as protecting health, safety, consumers, and the environment.

Cause:

The Department of Health's Underground Storage Tank program does not have adequate policies and procedures in place to ensure the inspection process is handled appropriately.

Effect or Potential Effect:

Public health and the environment could be at risk if legitimate violations go unnoticed and/or if violations are not followed up on. The lack of tracking and monitoring of the inspections and insufficient rotations of inspectors increases the risk of abuse within the inspection process.

Operational Improvement:

We recommend the Department of Health's Underground Storage Tank Program implement procedures to strengthen the current inspection process. Specifically the Department should ensure:

- Written policies and procedures are developed covering all aspects of the inspection process.
- Compliance form guidelines are made available on the Department's website.
- Inspectors are sufficiently rotated.
- A monitoring process is implemented and documented to ensure all compliance forms are submitted by the operators.
- All inspection results are provided to the owner/operator of facilities inspected.
- Violations, actions taken, and subsequent follow-ups are consistently tracked.
- A documented management review of inspection results is performed.
- Initial inspections of new underground storage tanks are occurring within the first year of operation.

Department of Health Response:

The Department agrees. Written policies and procedures are under development and action is being taken to strengthen the inspection process.

Management Letter (Informal Recommendations)

April 1, 2014

Terry Dwelle, MD
State Health Officer
North Dakota Department of Health
600 E. Boulevard Avenue
Bismarck, ND 58505

Dear Dr. Dwelle:

We have performed an audit of the North Dakota Department of Health for the biennium ended June 30, 2013, and have issued a report thereon. As part of our audit, we gained an understanding of the North Dakota Department of Health's internal control structure to the extent we considered necessary to achieve our audit objectives. We also performed tests of compliance as described in the same report.

Our audit procedures are designed primarily to enable us to report on our objectives including those related to internal control and compliance with laws and regulations and may not bring to light all weaknesses in systems and procedures or noncompliance with laws and regulations which may exist. We aim, however, to use our knowledge of your organization gained during our work to make comments and suggestions which we hope will be useful to you.

In connection with the audit, gaining an understanding of the internal control structure, and tests of compliance with laws and regulations referred to above, we noted certain conditions we did not consider reportable within the context of your audit report. These conditions relate to areas of general business practice or control issues that have no significant bearing on the administration of federal funds. We do, however, want to present our recommendations to you for your consideration and whatever follow-up action you consider appropriate. During the next audit we will determine if these recommendations have been implemented, and if not, we will reconsider their status.

The following present our informal recommendations.

ACCOUNTS PAYABLE/EXPENDITURES

Informal Recommendation 13-1: We recommend the North Dakota Department of Health properly reconcile the purchase cardholder statement to the receipts and document the reconciliation.

PAYROLL

Informal Recommendation 13-2: We recommend the North Dakota Department of Health ensure all hourly employee pay is properly supported by an approved timesheet.

OPERATIONAL IMPROVEMENTS

Informal Recommendation 13-3: We recommend the Department of Health's Underground Storage Tank Program update the current process to ensure consumer complaints are handled appropriately. Specifically the Department should ensure:

- Written policies and procedures are established for all areas of the complaint handling process.
- The methods in place to make a complaint are easily understandable to the general public as well as accessible.
- A process for handling a complaint that involves documentation of the steps taken including the tracking of the progress of the complaint is implemented.
- Guidelines are established to help determine the appropriate action to take regarding a complaint and how quickly they should be responded to.
- Management evaluates all complaints and violations throughout the entire complaint process.

Informal Recommendation 13-4: We recommend the Department of Health's Underground Storage Tank Program strengthen their enforcement process to ensure all enforcement actions are handled appropriately. Specifically the Department should ensure:

- Written policies and procedures are implemented for all areas of the enforcement process.
- Owners/operators are notified of the right to appeal violations/sanctions imposed upon them.
- The status of compliance violations identified during the inspection process are sufficiently monitored and tracked for the following factors.
 - Whether the operator/facility is back in compliance.
 - Whether a follow-up inspection is needed to verify that the noncompliance was resolved.
 - Whether the enforcement action accomplished the desired purpose.
- A list of enforcement actions taken against all facilities is made readily available to the general public through the Department's website.

Informal Recommendation 13-5: We recommend the Department of Health's Underground Storage Tank program ensure:

- Each inspector acknowledges an annual ethics and conflict of interest statement.
- A formal schedule of training is created, documented, and tracked.

Management of the North Dakota Department of Health agreed with these recommendations.

I encourage you to call myself or an audit manager at 328-2241 if you have any questions about the implementation of recommendations included in your audit report or this letter.

Sincerely,

A handwritten signature in cursive script that reads "Michael W. Schmitcke".

Michael W. Schmitcke, CPA
Auditor in-charge

You may obtain audit reports on the internet at:

www.nd.gov/auditor/

or by contacting the
Division of State Audit

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