

March 1, 1995

Mr. Dan Pearson, Executive Director  
Texas Natural Resource Conservation Commission  
12100 Park 35 Circle  
Austin, Texas 78701

Dear Mr. Pearson:

In general, the Commission has established a system to ensure compliance with federal regulations for its largest federal program, the \$38 million *Hazardous Substance Response Trust Fund (Superfund)*. However, the Commission is not adequately ensuring compliance with two federal regulations for the program. Regular reviews of contractor payrolls and on-site compliance inspections have not been occurring to ensure Davis-Bacon Act compliance. Additionally, Minority and Women's Business Utilization Reports are not always being submitted timely and accurately.

The Commission is also not ensuring that computer access procedures are always being followed. Unauthorized access increases the risk of errors and irregularities that may affect crucial automated systems.

The attached findings and Commission responses will appear in the *1994 Financial and Compliance Audit Results* report. This report contains the audit results of all agencies and universities we visited during the statewide financial and compliance audit.

When this report is published in May 1995, copies will be distributed to the commission or board chairperson and chief executive officer for each agency included. Additional copies can be obtained from Production Services at 479-4700.

A copy of this letter has been sent to each Commission member. If you have any questions, please call me at 479-4700.

Sincerely,

Dennis O'Neal, CIA  
Project Manager

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cc: Caroline Maclay Beyer, CPA, Director of Internal Audit  
Texas Natural Resource Conservation Commission

# Key Points of Report

## Texas Natural Resource Conservation Commission 1994 Statewide Financial and Compliance Audit

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March 1995

### Overall Conclusion

In general, the Commission has established a system to ensure compliance with federal regulations for the Superfund program. However, our audit did find that the Commission is not adequately ensuring compliance with two federal regulations for the program. We also identified that computer access procedures are not always being followed.

### Key Facts And Findings

- The Commission is not adequately ensuring compliance with the Davis-Bacon Act. Regular reviews of contractor payrolls and on-site compliance inspections have not been occurring to ensure proper wage payments. Additionally, Minority and Women's Business Utilization Reports are not always being submitted timely and accurately.
- The Commission is not adequately ensuring that computer access procedures are being followed. Unauthorized access increases the risk of errors and irregularities that may affect automated systems that are crucial to the Commission's operations.

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## Federal Compliance Issues

The Commission's most significant federal program, the Hazardous Substance Response Trust Fund (CFDA 66.802) and which is commonly referred to as Superfund, is administered by the Environmental Protection Agency.

Federal Compliance Issue 1:

### **Ensure Compliance With The Davis-Bacon Act**

**The Texas Natural Resource Conservation Commission is not adequately ensuring compliance with the Davis-Bacon Act for its *Hazardous Substance Response Trust Fund* grants (CFDA 66.802).** The Commission has not been performing regular reviews of contractor payrolls or on-site compliance inspections.

The Act requires that laborers and mechanics on federally financed construction projects be paid wages not less than those established for the locality by the Secretary of Labor.

Title 29 of the *Code of Federal Regulations (CFR), Part 5*, says the federal grantor agency is responsible for ensuring compliance with the Act. Investigations are required of all contracts with such frequency as necessary to ensure compliance. The investigations should include interviews with employees to ensure proper job classifications and examination of payroll data.

The federal grantor, the Environmental Protection Agency, has provided direction in its *EPA Superfund Guidance - Davis-Bacon Act/Service Contract Act and Related Bonding*. It says that early and complete labor compliance inspections are essential to a sound compliance program on all projects. These inspections should include reviews of contractor and subcontractor payrolls and on-site inspections and employee interviews as necessary. If a contractor is not in compliance, corrective action could be necessary which might include suspending payments, terminating contracts and calculating liquidated damages, and beginning debarment proceedings.

Without adequate monitoring, the Commission lacks assurance that contractors are complying with the Act. Noncompliance with the Act could result in questioned program costs.

**Recommendation:** The Commission should ensure that its contractors are in compliance with the Davis-Bacon Act. Monitoring should include review of contractor payrolls and on-site inspections and employee interviews, as necessary, to ensure compliance.

**Management's Response:** *The TNRCC hired a contractor to (1) review change orders and overhead rates for compliance with federal regulations (2) assist with cost negotiations and (3) to conduct Davis-Bacon reviews. Given a staff shortage and budget limitations, the Pollution Cleanup Division has determined that the contractor's number one priority is assisting project managers with contract and change order negotiations. A prime consultant has confirmed that by using this*

*contractor, the TNRCC was able to better negotiate contract terms for the "fixed cost of money." The contractor's advice has generated cost savings of over \$59,000 each month. Subsequent to your audit, the consultant completed three Davis-Bacon reviews.*

*When submitting monthly payroll reports, Superfund contractors must certify compliance with the Davis-Bacon Act. Because Davis-Bacon reviews are procedural in nature and generate no savings, the Division has prioritized its limited resources in order to maximize Superfund funding. We are currently determining whether oversight engineers, as part of their contracted project management/review function, should ascertain compliance with the Act.*

Federal Compliance Issue 2:

### **Ensure Minority And Women's Business Utilization Reports Are Properly Submitted**

**Minority and Women's Business Utilization Reports for the *Hazardous Substance Response Trust Fund* program (CFDA 66.802) are not always being submitted timely and accurately.** We tested reports for the third quarter of the federal fiscal year 1994 for six grants. For two of the grants no report was submitted and the other four were submitted after the federal deadline. Of the four grant reports submitted, three had incorrect contract ID numbers and the other had an incorrect federal financial agreement ID number.

Title 40 of the *Code of Federal Regulations (CFR), Part 35.6665*, requires that Minority and Women's Business Enterprise (MBE/WBE) Reports be submitted within 30 days after the end of each federal fiscal quarter, regardless of whether the recipient awards a contract to an MBE or WBE during that quarter.

If reports are not submitted accurately and in a timely manner, it could hinder the determination of MBE/WBE participation goals. Noncompliance with federal reporting requirements could also result in questioned program costs.

**Recommendation:** We recommend that the Commission ensure that Minority and Women's Business Utilization Reports are submitted in accordance with federal requirements.

**Management's Response:** *M/WBE reports have not been consistently reported to EPA primarily because the Division has not received the reports back from the consultants and/or contractors in a timely manner. To ensure timely reporting, for each monthly invoice the Division will require contractors to complete a form which will provide mandatory M/WBE information. By doing this, the Division's contractors will no longer be required to prepare quarterly reports, as the information will be collected as part of the monthly billing process. The Division will then prepare the necessary reports using the information provided.*

## Internal Control Issue

Internal Control Issue 1:

### **Ensure Computer Access Procedures Are Followed**

(Prior Audit Issue)

**The Texas Natural Resource Conservation Commission should ensure that computer access procedures are followed.** In response to a prior year finding, the Commission has developed formal agency-wide procedures for requesting and approving access to the computer system. However, we tested August 1994 employee terminations and found that some employees did not have their computer access privileges promptly removed. We also found that one employee out of ten tested did not have the required access authorization form on file with the access administrator.

Unauthorized computer access increases the risk of errors and irregularities that may affect the automated systems that are crucial to the Commission's operations.

Recommendation: We recommend more timely reviews of employee job status changes to ensure that procedures have been followed. Access privileges to the computer system should be promptly removed when an employee terminates. The Commission should also ensure that all employees have proper access authorization on file.

Management's Response: *We agree with the finding and recommendation. Our current process does include formal procedures for granting, modifying, or removing access. However, we are working on a process to further address computer access procedures and authorization. This process will reflect our increasing reliance on distributed processing. Additionally, we have purchased network management tools that will allow us to audit agency-wide for compliance with computer access procedures. We plan to have this new process in place by March 1, 1995.*

### **Audit Scope**

The primary focus of our audit was the *Hazardous Substance Response Trust Fund* (Superfund) program. The program comprised 56 percent (\$38 million) of the agency's total federal funds. We gained an understanding of the internal controls that would prevent or detect noncompliance with federal requirements. We tested compliance with the general and specific program requirements.