CALIFORNIA STATE AUDITOR

Bureau of State Audits

Implementation of State Auditor's Recommendations

Audits Released in January 2008 Through December 2009

Special Report to
Senate Budget and Fiscal Review Subcommittee #2—Resources, Environmental Protection, Energy and Transportation

SPECIAL REPORT

February 2010 Report 2010-406 S2

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February 23, 2010 2010-406 S2

The Governor of California
Members of the Legislature
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

The State Auditor's Office presents its special report for the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. This report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. This report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report, we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes a table that identifies monetary values that auditees could realize if they implemented our recommendations, and is available on our Web site at www.bsa.ca.gov. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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Introduction

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2008 through December 2009, that relate to agencies and departments under the purview of the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The State Auditor's Office (office) policy requests that the auditee provides a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee to provide a response beyond one year or we may initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of January 2010. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2008 through December 2009. Because an audit report and subsequent recommendations may cross over several departments, they may be accounted for on this table more than one time. For instance, the E-Waste Report, 2008 112, is reflected under the California Highway Patrol, the Integrated Waste Management Board, the Department of Motor Vehicles, the Department of Toxic Substances Control, and the Department of Transportation.

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Recommendation Status Summary

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION					
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	NO FOLLOW-UP RESPONSE	PAGE NUMBERS
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	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION					
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	NO FOLLOW-UP RESPONSE	PAGE NUMBERS
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E-Waste Report 2008-112				●	2					17

California Energy Resources Conservation and Development Commission

It Is Not Fully Prepared to Award and Monitor Millions in Recovery Act Funds and Lacks Controls to Prevent Their Misuse

REPORT NUMBER 2009-119.1, DECEMBER 2009

California Energy Resources Conservation and Development Commission response as of December 2009

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a review of the preparedness of the California Energy Resources Conservation and Development Commission (Energy Commission) to receive and administer federal American Recovery and Reinvestment Act of 2009 (Recovery Act) funds awarded by the U.S. Department of Energy for its State Energy Program (Energy Program). The federal government enacted the Recovery Act for purposes that include preserving and creating jobs; promoting economic recovery; assisting those most affected by the recession; investing in transportation, environmental protection, and other infrastructure; and stabilizing state and local government budgets.

Finding #1: Because the Energy Commission is not yet prepared to administer Recovery Act funds, the State is at risk of losing millions.

As of November 16, 2009, the Energy Commission had entered into contracts totaling only $40 million despite having access to $113 million of the $226 million in Recovery Act funds it had been awarded for the Energy Program—the Energy Commission is not authorized to spend the remaining $113 million until January 1, 2010. Although these funds have been available to the Energy Commission since July 2009, it has approved the use of only $51 million for Energy Program services, and of this amount has entered into two contracts totaling $40 million with subrecipients for only two of the eight subprograms it intends to finance with Recovery Act funds. However, none of the $40 million has been spent. The funds from these two contracts, which were awarded to the Department of General Services and the Employment Development Department, will be used to issue loans, grants, or contracts to state departments and agencies to retrofit state buildings to make them more energy efficient and to provide job skills training for workers in the areas of energy efficiency, water efficiency, and renewable energy. However, none of the $40 million has been spent. Therefore, except for the $71,000 that the Energy Commission has used for its own administrative costs, no Recovery Act funds have been infused into California's economy. Additionally, the Energy Commission has been slow in implementing the internal controls needed to administer the Energy Program. Furthermore, based on the time frames provided by the Energy Commission, the Recovery Act funds will likely not be awarded to subrecipients until at least April 2010 to July 2010.

The Energy Commission still needs to complete several critical tasks before it can begin implementing the Energy Program and award Recovery Act funds to subrecipients to be spent for various projects. For example, the Energy Commission has not completed guidelines for subrecipients to follow when providing services under some of the new subprograms, or completed and released solicitations to potential subrecipients who will provide program services.

If the Energy Commission continues its slow pace in implementing the necessary processes to obligate the Recovery Act funds, the State is at risk of either having the funds redirected by the U.S. Department of Energy or awarding them in a compressed period of time without first establishing an adequate system of internal controls, which increases the risk that Recovery Act funds will be misused.

According to the Energy Commission's administrator for the Economic Recovery Program (program administrator), several factors have contributed to the delay in spending the Energy Program's Recovery Act funds. He stated that seven of the eight subprograms being funded by the Recovery Act funds are new, and therefore it was necessary to develop program guidelines. He indicated that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it the statutory authority to develop and implement the guidelines and to spend the federal Recovery Act funds.

We recommended that the Energy Commission promptly solicit proposals from entities that could provide the services allowable under the Recovery Act and execute contracts, grants, or loan agreements with these entities.

Energy Commission's Action: Pending.

Although the Energy Commission does not agree with our characterization of its progress in implementing the Energy Program, it does agree that additional internal controls should be implemented to meet federal Recovery Act requirements and that further work is needed to finalize its preparations to disburse the Recovery Act funds. Additionally, the Energy Commission agrees that program implementation should be expedited to maximize the economic benefits of the Recovery Act.

Finding 2: The Energy Commission's current control structure is not sufficient to ensure proper use of Recovery Act funds.

The Energy Commission has not yet established the internal control structure it needs to adequately address the risks of administering Recovery Act funds. The Energy Commission is in the process of seeking help in establishing such a control structure, but as of November 16, 2009, had not issued a request for proposal (RFP) from potential contractors. The Energy Commission's contract manager estimates that it takes three to five months from the time the commission releases an RFP until the contract is executed. Added to the three to five months estimated to execute a contract will be whatever time the contractor needs to render the services it is hired to perform. Further delay increases the risk of delays in implementing the subprograms, possibly inhibiting the Energy Commission's ability to obligate Recovery Act funds before the September 30 deadline. Alternatively, the Energy Commission might try to award the funds to subrecipients without first establishing an adequate system of internal controls, increasing the possibility that Recovery Act funds will not be used appropriately and heightening the risk of fraud, waste, and abuse.

Our assessment of the Energy Commission's preparedness to administer the Recovery Act funds it received for the Energy Program showed that in some areas it appeared to be ready or almost ready, but we identified several areas in which the Energy Commission's controls are not adequate. For example, despite its assertions that its present internal control structure will enable it to properly administer the Recovery Act funds, the Energy Commission could not provide documentation to demonstrate that its existing controls are sufficient to mitigate and minimize the risks of fraud, waste, and abuse. In addition,

the Energy Commission could not show it has a process in place to effectively monitor subrecipients' use of the Recovery Act funds and noted that it did not have reporting mechanisms in place to collect and review the data required to meet the Recovery Act transparency requirements.

We recommended that the Energy Commission, as expeditiously as possible, take the necessary steps to implement a system of internal controls adequate to provide assurance that Recovery Act funds will be used to meet the purposes of the Recovery Act. These controls should include those necessary to mitigate the potential for fraud, waste, and abuse. Such steps should include quickly performing the actions already planned, such as assessing the Energy Commission's controls and the capacity of its existing resources and systems, and promptly implementing all needed improvements.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission stated that it agrees that its internal controls can be strengthened to fully comply with Recovery Act guidelines and ensure the proper use of funds and collection of required data. It further stated that these controls will be developed and documented over the next several months with the assistance of contractors who will review existing processes and procedures and assist staff in developing adequate procedures and documentation. The Energy Commission released an RFP for the auditing services on November 24, 2009, and it released the monitoring, verification, and evaluation RFP on December 7, 2009.

The Energy Commission also stated that it recognizes that it would be preferable to have the support contracts in place to assist with the implementation of the Recovery Act funds. It believes the timing of its planned commencement of audit and monitoring, verification, and evaluation contracts will coincide with its planned awards of Recovery Act funds. Finally, the Energy Commission stated that a support contractor has been working closely with administrative and technology staff to develop a comprehensive reporting system that will capture data for federal Office of Management and Budget and the U.S. Department of Energy reporting requirements, as well as other data elements.

California Environmental Protection Agency

Investigations of Improper Activities by State Employees, January 2008 Through June 2008

ALLEGATION I2008-0678 (REPORT I2008-2), OCTOBER 2008

California Environmental Protection Agency's response as of March 2009

An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit time sheets that accurately reported her absences from work during the period August 2006 through June 2008. In addition, the officials responsible for managing her daily activities and for monitoring her time and attendance did not ensure that the employee documented her absences correctly and that Cal/EPA charged the absences against her leave balances. Consequently, Cal/EPA did not charge the employee's leave balances for the 768 hours that she was absent from work; instead, it paid her $23,320 for these hours.

Investigative Highlight . . .

An employee of the California Environmental Protection Agency (Cal/EPA) failed to promptly submit accurate time sheets during a 23-month period. As a result, Cal/EPA did not charge the employee's leave balances for 768 hours when she was absent, and it paid her $23,320 for those hours.

Finding #1: A Cal/EPA employee failed to promptly submit time sheets that accurately reported her absences from work during a 23-month period.

From August 2006 through June 2008, the employee did not submit monthly time sheets at the end of each pay period that accurately documented the time she spent working and the time she was absent. For the 23 pay periods we examined during the investigation, the employee never submitted time sheets for five pay periods, she submitted time sheets up to several months late for 12 pay periods, and she promptly submitted time sheets for just six pay periods. However, management declined to approve nearly all of the time sheets that the employee submitted late or on time because the time sheets either did not account for all absences or because the time sheets reported overtime work that had not received preapproval. Without the approved time sheets, Cal/EPA did not record the employee's absences or overtime in its leave accounting system. Consequently, Cal/EPA did not charge the employee's leave balances for the 768 hours that she was absent from work during the 23-month period; instead, it paid her $23,320 for these hours.

Cal/EPA's Action: Corrective action taken.

Cal/EPA approved the 23 timesheets in September 2008. In addition, it reported in September 2008 that it had recalculated, updated, and corrected the employee's leave balances to reflect her actual absences and overtime worked, based on the latest approved time sheets, for all pay periods through August 2008. Further, in December 2008 Cal/EPA notified us that it had established an accounts receivable for $616 the employee was docked pay in September 2006. In March 2009 Cal/EPA notified us that it began deductions in December 2008 and stated that it would continue the deductions until it collected the full amount owed to the State.

Finding #2: Cal/EPA officials failed to take sufficient actions to correct the employee's lax time reporting and because of their inaction, the employee's absences were not charged against her leave balances.

Not only did the employee fail to submit her time sheets accurately and promptly, but the Cal/EPA officials responsible for managing her day-to-day activities and monitoring her time and attendance also failed to ensure that the employee submitted monthly time sheets that correctly reported her absences and time worked. The employee worked for Official A, who assigned Official B and then Official C to monitor the employee's time and attendance and to approve her time sheets. In particular, the efforts made by Official A and Official C in 2007 and early 2008 did little to resolve the employee's failure to accurately report her absences and overtime, and to promptly complete her time sheets. Official A assigned Official C around March 2007 to monitor the employee's time and attendance and to approve her time sheets. In May 2007 Official A met with the employee to counsel her about her absenteeism. However, the meeting notes indicate that Official A did not discuss the employee's failure to submit her time sheets promptly and accurately. Furthermore, Official C offered evidence that she tried to pressure the employee to comply with the time-reporting requirements through some oral conversations and numerous e-mails but the employee did not comply. Yet, Official C took no action to enforce her requests for compliance.

Cal/EPA's Action: Corrective action taken.

In September 2008 Cal/EPA informed us that Official A had issued a counseling memorandum to the employee, which discussed the employee's failure to promptly submit time sheets that accurately accounted for her absences. Moreover, Cal/EPA notified us that Official C had issued another counseling memorandum to the employee, which described the implementation of administrative controls to ensure that the employee correctly accounts for her absences and promptly completes her time sheets and other time reporting documents. Furthermore, in October 2008 Cal/EPA reported that it had transferred the employee to another program within Cal/EPA where she is more closely monitored by a different supervisor. Cal/EPA also reported that the employee's new position did not require frequent overtime.

California Highway Patrol

It Followed State Contracting Requirements Inconsistently, Exhibited Weaknesses in Its Conflict-of-Interest Guidelines, and Used a State Resource Imprudently

REPORT NUMBER 2007-111, JANUARY 2008

California Highway Patrol's and the Department of General Services' responses as of January 2009

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits to review the California Highway Patrol's (CHP) purchasing and contracting practices and its use of state resources. Specifically, the audit committee asked us to do the following:

- Review the CHP contracts awarded since January 1, 2004, for helicopters, motorcycles, guns and accessory equipment, patrol car electronics, and counseling services to determine whether the CHP had complied with laws related to purchasing and whether the contracts were cost-beneficial and in the best interest of the State.
- Ascertain whether the State could cancel any noncompetitive purchasing agreements that were not compliant with laws or in the best interest of the State and repurchase goods using competitive bidding.
- Examine relevant internal audits and personnel policy or financial reviews to determine whether the CHP responded to the issues raised and took recommended corrective actions.
- Evaluate the CHP's contracts for specified goods and services and determine whether conflicts of interest existed.
- Identify the CHP's policies and practices for using state equipment, including aircraft, and determine whether the CHP complied with these policies and laws and whether its employees reimbursed the State for any personal use of state property.

Finding #1: The CHP and the Department of General Services (General Services) insufficiently justified awarding a $6.6 million handgun contract.

In early 2006 the CHP submitted documents to General Services to purchase more than 9,700 handguns of a particular make and model. By specifying a particular make and model, the CHP intended to make a sole-brand purchase, which required it to justify why only that make and model would fulfill its needs. However, the CHP did not fully justify the sole-brand purchase. For example, the CHP did not fully explain the handgun's unique features or describe other handguns it had examined and rejected and why. Rather than explain how the specifications and performance factors for this model of handgun were unique, the CHP focused on the projected service life of the previous-model handgun, the CHP's inventory needs, officer

Audit Highlights . . .

Our review of the California Highway Patrol's (CHP) purchasing and contracting practices and use of state resources revealed the following:

» *The CHP did not include all the justifications recommended by the State Administrative Manual in its $6.6 million handgun purchase request, nor did it sufficiently justify the cost of its planned $1.8 million patrol car electronics purchase.*

» *The Department of General Services approved the CHP's purchases even though the CHP's purchase documents did not provide all the requisite justifications for limiting competition or for the cost of the product.*

» *Despite the deficiencies in the handgun and patrol car electronics procurements, our legal counsel advised us that those deficiencies did not violate the provisions of law that would make a contract void for failure to comply with competitive bidding requirements.*

» *The CHP has weaknesses in its conflict-of-interest guidelines including not requiring employees who deal with purchasing to make financial interest disclosures, and not consistently following its procedures to annually review its employees' outside employment.*

» *Between 1997 and 2007, the CHP owned and operated a Beechcraft brand King Air airplane (King Air), but could not substantiate that it always granted approval to use the King Air in accordance with its policy, and its decisions to use the King Air were not always prudent.*

safety, the costs for a new weapons system, and the time it would need to procure a new weapons system.[1] None of these issues describe the new-model handgun's unique performance factors or why the CHP needed those specific performance factors. The CHP's sole-brand justification also did not explain what other handguns it examined and rejected and why. Further, despite its oversight role, General Services approved the CHP's purchase request, although the CHP did not fully justify the exemption from competitive bidding requirements. Because the CHP did not fully justify the handgun purchase, and General Services did not ensure that the purchase was justified, neither can be certain that the purchase was made in the State's best interest.

Moreover, General Services' procurement file for the CHP handgun purchase did not contain sufficient documentation showing how the CHP chose its proposed suppliers or how those suppliers would meet the bid requirements. According to a General Services acquisitions manager, when conducting the CHP's handgun procurement, General Services relied on a list of potential bidders supplied by the CHP and did not verify whether the bidders were factory-authorized distributors. Because it did not adequately document how the CHP chose its proposed suppliers, General Services did not fulfill its oversight role of ensuring that various bidders could compete and that the State received the best possible value.

We recommended that the CHP provide a reasonable and complete justification for purchases in cases where competition is limited, such as sole-brand or noncompetitive bidding purchases. Further, we recommended that it plan its contracting activities to allow adequate time to use the competitive bid process or to prepare the necessary evaluations to support limited-competition purchases. We also recommended that the CHP fully document its process for verifying that potential bidders are able to bid according to the requirements in the bid solicitation document and that General Services verify that the lists of bidders that state agencies supply it reflect potential bidders that are able to bid according to the requirements specified in the bid.

CHP's Action: Corrective action taken.

The CHP told us that is has implemented a new documentation process for its sole-brand purchases requiring authorization through its Administrative Services Division with final approval by the assistant commissioner for staff operations. CHP also noted that it takes the same approach with noncompetitive bid documentation to ensure that its noncompetitive justification documents address all the necessary factors.

The CHP reported that it is verifying potential bidders through General Services' Small Business/Disabled Veteran Business Enterprise Web site and other on-line searches, and through speaking directly with potential bidders. The CHP updated staffs' desk procedures to reflect the necessary verification.

General Services' Action: Corrective action taken.

General Services told us that verifying the bidder list represents existing procedures and best practices. In January 2008 it issued instructions to acquisitions staff reemphasizing the requirement to verify that potential bidders are able to bid according to bid requirements. Further, General Services held meetings with acquisitions staff during February 2008 to emphasize the importance of verifying potential bidders lists to ensure adequate competition for the requirements specified in the bid. General Services used the CHP's handgun procurement as a case study during those meetings.

[1] A weapons system comprises the handgun and the ammunition the handgun fires.

Finding #2: The CHP supplied insufficient price justification for spending $1.8 million for TACNET™ systems (TACNET™), and General Services was inconsistent in approving the purchase.

In 2005 the CHP submitted to General Services a $1.8 million purchase estimate for a sole-brand purchase of 170 TACNET™s, which consolidate radio and computer systems in patrol cars to allow for a single point of operation.[2] General Services appropriately denied the CHP's sole-brand request to purchase the TACNET™ when it found a lack of competition among the bidders. The CHP resubmitted the procurement as a noncompetitive purchase request but did not include an adequate cost analysis demonstrating that it had determined that the TACNET™'s unit price was fair and reasonable. For example, the CHP stated in its noncompetitive justification that an actual cost comparison was not possible because the TACNET™ was not duplicated elsewhere in the industry. Thus, rather than conducting an actual cost comparison of the TACNET™ with other systems, the CHP compared the cost of the TACNET™ to the cost of separate products that offered at least one of the features of the system. The CHP then concluded that the price for a TACNET™ system was fair and reasonable. The cost analysis is an important part of the contract justification and serves to ensure that state agencies receive a fair and reasonable price in the absence of price competition.

Moreover, General Services did not ensure that the revised procurement documents contained the required analysis. General Services' policy states that it will reject an incomplete noncompetitive justification, but it did not do so in this instance. Also, General Services did not fulfill its procurement oversight role by ensuring that the State received fair and reasonable pricing on a purchase contract in which the marketplace was not invited to compete.We recommended that the CHP provide a complete analysis of how it determines that the offered price is fair and reasonable when it chooses to follow a noncompetitive bid process.

CHP's Action: Corrective action taken.

CHP reported that it has included in its procurement checklist steps for staff to follow in a noncompetitive procurement. These steps include staff documenting their efforts to identify similar goods and providing an evaluation for why the similar goods are unacceptable. Additionally, staff must examine the California State Contracts Register to identify suppliers and document the examination. CHP stated that when it can identify no other suppliers, it will use the information gathered from similar goods to justify the cost of a noncompetitive procurement is fair and reasonable.

Finding #3: The sole-brand procurement method may sometimes allow state agencies to avoid the stricter justification requirements for noncompetitive procurements.

Although state law requires General Services to review state agencies' purchasing programs every three years, General Services cannot specifically screen for sole-brand purchases because data related to these procurements is kept only in the individual department's purchasing files. The justifications and authority needed for a sole-brand purchase are less stringent than those needed for a noncompetitive procurement. For example, state agencies must document more information for a noncompetitive bid, such as why the item's price is appropriate. In addition, state agencies are typically authorized to make sole-brand purchases with higher values than are allowed for noncompetitive purchases. For example, when making a sole-brand purchase of information technology goods and services, the purchase limit is $500,000, but the limit for making a noncompetitive purchase is only $25,000. As a result, the opportunity exists for state agencies to inappropriately use the sole-brand procurement method as a way to limit competition and avoid the more restrictive criteria associated with a noncompetitive bid.

We discussed the need to review sole-brand purchases with General Services, and it agreed that the information necessary to target sole-brand procurements is not currently available. However, General Services told us that it recently added specific steps to its review procedures related to sole-brand purchases and indicated that if it determines that an individual state agency has risk in this area, General Services will include sole-brand purchases in its review.

[2] TACNET™ stands for tactical network and is a registered trademark of Visteon Corporation.

To ensure that state agencies use the sole-brand procurement method appropriately and not in a manner to avoid the stricter justification requirements for noncompetitive procurements, we recommended that General Services study the results from its review procedures related to sole-brand purchases. Based on the results of its study, General Services should assess the necessity of incorporating specific information on sole-brand purchases into its existing procurement reporting process to evaluate how frequently and widely the sole-brand purchase method is used.

General Services' Action: Partial corrective action taken.

General Services reported that it conducted a survey during July and August 2008 and found that a significant number of state agencies conduct sole-brand procurements. General Services is drafting revisions to the State Contracting Manual to include a requirement for state agencies to justify, document, and report sole-brand procurement requests.

Finding #4: The State does not have sufficient justification to cancel the CHP's handgun or TACNET™ contracts.

The State has several ways that it can end its contractual relationship with a contractor, two of which could be applicable for the contracts we reviewed. The State's standard contract provisions allow the State to terminate a contract for specified reasons, and state law provides that a contract that is formed in violation of law is void. Based on the contractors' performance under the handgun and TACNET™ contracts, our legal counsel has advised us that General Services would not have a basis for relying on the standard contract provisions to cancel these contracts. Moreover, although a broadly worded contract provision permits termination of a state contract when it is in the interest of the State, our legal counsel advised us that it is unlikely that the State could successfully cancel the handgun and TACNET™ contracts on that basis, particularly because the contractors have already provided the goods called for under the contract and have otherwise performed their duties.

In addition, although we identified deficiencies in the procurements of the handguns and TACNET™, our legal counsel advised us that those deficiencies did not violate the provisions of law that would make a contract void for a failure to comply with competitive bidding requirements. The State Administrative Manual, Section 3555, recommends, but does not require, that the statements justifying sole-brand procurements and noncompetitive bids address certain questions, such as what other comparable products were examined and why they were rejected. Because these statements are merely recommended and not legally required, a failure to provide them did not constitute a violation of law that would make these contracts void. Nonetheless, we believe that it is important for state agencies to demonstrate to General Services that they examined other comparable products and to explain why the products were rejected or, if there are no other comparable products, to explain how the state agency reached that conclusion, to ensure that competitive bidding occurs whenever possible.

To ensure that state procurements are competitive whenever possible, we recommended that General Services revise Section 3555 to require that state agencies address all of the factors listed in that section when submitting justification statements supporting their purchase estimates for noncompetitive or sole-brand procurements. In addition, if General Services believes that the law exempting provisions in the State Administrative Manual and the State Contracting Manual related to competitive procurement requires clarification to ensure that the requirements in those publications are regulations with the force and effect of law, General Services should seek legislation making that clarification.

General Services' Action: Corrective action taken.

In March 2008 General Services revised the State Administrative Manual, Section 3555, to require state agencies to fully address all of the factors listed in the section when submitting justification statements supporting a sole-brand purchase estimate. In addition, General Services reported that it issued information to state agencies explaining the need to adequately justify sole-brand procurements and gave staff additional direction for processing such requests internally. Finally, General Services told us that it believed it had sufficient enforcement authority in current statute and that additional clarifying legislation was unnecessary.

Finding #5: The CHP could not demonstrate that all employees complied with the necessary disclosures in its conflict-of-interest policies.

Although the CHP has policies on conflicts of interest, it could not show that it consistently applied those policies. The CHP carries out its conflict-of-interest procedures through employee submission of the following four documents: the Fair Political Practices Commission's (FPPC) Form 700, Statement of Economic Interests (Form 700); the secondary-employment request; the vendor/contractor/consultant business relationships memorandum (business relationships memo); and an inconsistent and incompatible activities statement. The CHP's conflict-of-interest policies and procedures rely heavily on employee disclosure, yet the policies do not encompass all of the individuals involved with its purchasing and contracting process. In addition, the CHP could not demonstrate that all employees required to do so made the necessary disclosures. As a result, neither we nor the CHP is able to fully determine whether potential conflicts of interest exist at the CHP.

For example, the CHP has not designated as Form 700 filers employees in key positions with purchasing responsibility or approval authority, such as the staff in its purchasing services unit, a position within the Office of the Commissioner that has purchasing approval authority, or positions in which employees develop product specifications used as the basis for purchasing necessary goods.

The CHP's secondary-employment policy requires its employees to disclose employment outside of the CHP by submitting a request for approval of secondary employment. The requests and the CHP's reviews give the agency an ongoing opportunity to evaluate whether employees' second jobs create a conflict of interest; however, the CHP does not always adhere to this policy. The CHP also uses a business relationships memo and its inconsistent and incompatible activities statement to inform employees of their conflict-of-interest responsibilities and remind them of the policy surrounding conflicts of interest. Based on our testing, the CHP follows its procedure for having employees sign a statement regarding inconsistent and incompatible activities, but it does not always obtain a signed business relationships memo.

Furthermore, the CHP's draft conflict-of-interest policy does not adequately define the employees and procurements to which the policy applies, nor does the policy address vendor conflicts of interest.

To ensure that it informs employees about and protects itself against potential conflicts of interest, we recommended that the CHP include as designated employees for filing the Form 700, all personnel who help to develop, process, and approve procurements. In addition, we recommended that the CHP ensure that it documents, approves, and reviews secondary-employment requests annually in accordance with its policy. We also recommended that the CHP revise its employee statement regarding conflicts of interest to include employees involved in all stages of a procurement. In addition, the CHP should reexamine its reasons for developing the conflict-of-interest and confidentiality statement for vendors, and ensure that this form meets its needs.

CHP's Action: Partial corrective action taken.

The CHP stated that its major departmental reorganization, finalized in June 2008, invalidated the draft conflict-of-interest code it had submitted to the FPPC. The CHP further noted that its Personnel Management Division has recommenced working on the conflict-of-interest code, including embarking on an extensive analysis and review of positions required to be included in the code that will require notification to be given to collective bargaining units. When submitted to the FPPC, the CHP anticipates its conflict-of-interest code will be approved and implemented by March 2010.

The CHP reported that its Office of Investigations has included in its annual citizens' complaint review an examination of secondary employment requests.

In July 2008 the CHP published its policy addressing which procurements require the Conflict of Interest Statement – Employee, and which employees are required to complete the statement.

The CHP updated the Conflict of Interest and Confidentiality Statement for its vendors and included the revised form in its Highway Patrol Manual.

Finding #6: Conflicts of interest caused General Services to declare void two motorcycle contracts.

During 2002 and 2004, General Services formed two statewide contracts with a single motorcycle dealership for CHP to acquire motorcycles for its use. These two contracts generally covered the period from January 2002 to April 2006 and allowed the CHP to purchase motorcycles as needed, for a total amount not to exceed $13.7 million. The CHP purchased motorcycles, obtained warranty services, and exercised a motorcycle buyback provision under these contracts. However, General Services determined that the contracts were entered into in violation of the California Government Code, Section 1090, which prohibits state employees from having a financial interest in contracts they make. Therefore, in June 2005 General Services declared the contracts void.

Although General Services secured a $100,000 monetary settlement from the motorcycle dealer, General Services did not finalize a settlement with the manufacturer, BMW Motorrad USA, a division of BMW of North America, LLC (BMW Corporation), which had provided assurances related to the contracts. The CHP estimates that it has incurred $11.4 million in lost buyback opportunities and motorcycle maintenance costs because General Services declared the two contracts void. This estimate covers the period October 2005 to October 2007 and reflects that the CHP and General Services were not successful in securing another motorcycle contract in 2006. General Services told us in November 2007 that it had reestablished negotiations with BMW Corporation. In its initial response to this audit, General Services disclosed the BMW Corporation had no interest in buying back the existing motorcycles. We are unaware of any other points General Services and BMW Corporation may be negotiating. Therefore, it is unclear if or when a settlement will be reached and what benefits, if any, will be derived from it.

We recommended that General Services continue negotiating with BMW Corporation regarding the canceled contracts for motorcycles to develop a settlement agreement that is in the State's best interest.

General Services' Action: Corrective action taken.

General Services' disclosed that it had concluded in January 2008 its negotiations with BMW Corporation when BMW Corporation informed General Services that it had no interest in initiating a buyback program.

Finding #7: The CHP's broad policies for using its King Air aircraft may have led to some imprudent decisions.

Between 1997 and 2007, the CHP owned and operated an eight-passenger aircraft: a Beechcraft brand model A200 King Air (King Air). The CHP's policies for using the King Air consisted of both an air operations manual that applies to all of the CHP's aircraft and standard operating procedures specific to the King Air. These policies stated that the CHP could use the King Air for missions that supported the agency or for unofficial use, as authorized by the Office of the Commissioner.

Based on our review of the CHP's flight logs from calendar years 2006 and 2007, the purposes of some flights do not seem prudent. For example, the CHP's management used the King Air for two round-trips to destinations in close proximity to Sacramento. Given the State's reimbursement rate at the time of 48.5 cents per mile, the cost to the State of driving to these two locations would have been about $150. Using the CHP's calculation from January 2005 that the King Air's operating cost was $1,528 per hour of flight time, the cost of flying the King Air was at least $1,980 for these two round trips, more than 13 times the cost of driving.

For 14 of the King Air's 69 mission flights during 2006, the purpose of the flight was not aligned well with the CHP's function, as its policy dictates, or for state business. For example, on one occasion, the commissioner's wife accompanied her husband and four of his staff on a round-trip flight between Sacramento and Burbank to attend a function hosted by a nonprofit organization affiliated with the CHP. Although the presence of the commissioner's wife on the flight could be questioned, the commissioner later reimbursed the State $254, the amount of a commercial flight, for his wife's share of the flight. Furthermore, the CHP used the King Air to transport from Portland, Oregon, the family of an officer killed while on duty to that officer's memorial service and the subsequent sentencing hearing of the responsible motorist. Although we understand the CHP's desire to provide support to the officer's grieving family, the CHP's choice to use the King Air for this purpose was not the best use of a State resource. Twelve of the King Air's 69 mission flights during 2006 transported these family members to various destinations, or the flights were required to position the plane to accommodate the family's transportation. Using the CHP's operating cost calculation, the total cost of all the flights we questioned exceeded $24,000 and, other than the reimbursement for the commissioner's wife, the CHP was not reimbursed for these costs.

To ensure that the use of state resources of a discretionary nature for purposes not directly associated with the CHP's law enforcement operations receives approval through the Office of the Commissioner, we recommended that the CHP develop procedures for producing, approving, and retaining written documentation showing approval for these uses.

CHP's Action: Corrective action taken.

The CHP told us that it has revised its policy to emphasize usage of state resources for business purposes and that any exceptions must be approved in writing by the Office of the Commissioner. CHP stated that it published General Order 0.9, Use of State Owned Equipment and Resources, in November 2008.

Electronic Waste

Some State Agencies Have Discarded Their Electronic Waste Improperly, While State and Local Oversight Is Limited

REPORT NUMBER 2008-112, NOVEMBER 2008

Responses from eight audited state agencies as of December 2009

The Joint Legislative Audit Committee asked the Bureau of State Audits to review state agencies' compliance with laws and regulations governing the recycling and disposal of electronic waste (e-waste). The improper disposal of e-waste in the State may present health problems for its citizens. According to the U.S. Environmental Protection Agency (USEPA), computer monitors and older television picture tubes each contain an average of four pounds of lead and require special handling at the end of their useful lives. The USEPA states that human exposure to lead can present health problems ranging from developmental issues in unborn children to brain and kidney damage in adults. In addition to containing lead, electronic devices can contain other toxic materials such as chromium, cadmium, and mercury. Humans may be exposed to toxic materials from e-waste if its disposal results in the contamination of soil or drinking water.

Finding #1: State agencies appear to have improperly discarded some electronic devices.

In a sample of property survey reports we reviewed, two of the five state agencies in our audit sample—the Department of Motor Vehicles (Motor Vehicles) and the Employment Development Department (Employment Development)—collectively reported discarding 26 electronic devices in the trash. These 26 electronic devices included such items as fax machines, tape recorders, calculators, speakers, and a videocassette recorder that we believe could be considered e-waste. The property survey reports for the other three state agencies in our sample—the California Highway Patrol (CHP), the Department of Transportation (Caltrans), and the Department of Justice (Justice)—do not clearly identify how the agencies disposed of their electronic devices; however, all three indicated that their practices included placing a total of more than 350 of these items in the trash.

State regulations require waste generators to determine whether their waste, including e-waste, is hazardous before disposing of it. However, none of the five state agencies in our sample could demonstrate that they took steps to assess whether their e-waste was hazardous before placing that waste in the trash. Further the California Integrated Waste Management Board (Waste Management Board) has advised consumers, "Unless you are sure [the electronic device] is not hazardous, you should presume [that] these types of devices need to be recycled or disposed of as hazardous waste and that they may not be thrown in the trash."

Audit Highlights . . .

Our review of five state agencies' practices for handling electronic waste (e-waste) revealed that:

- ***The Department of Motor Vehicles and the Employment Development Department improperly disposed of electronic devices in the trash between January 2007 and July 2008.***
- ***The California Highway Patrol, Department of Transportation, and Department of Justice did not clearly indicate how they disposed of some of their e-waste; however, all indicated that they too have discarded some e-waste in the trash.***
- ***The lack of clear communication from oversight agencies, coupled with some state employees' lack of knowledge about e-waste, contributed to these instances of improper disposal.***
- ***State agencies do not consistently report the amount of e-waste they divert from municipal landfills. Further, reporting such information on e-waste is not required.***
- ***State and local oversight of e-waste generators is infrequent, and their reviews may not always identify instances when state agencies have improperly discarded e-waste.***

To avoid contaminating the environment through the inappropriate discarding of electronic devices, we recommended that state agencies ascertain whether the electronic devices that require disposal can go into the trash. Alternatively, state agencies could treat all electronic devices they wish to discard as universal waste and recycle them.

State Agencies' Actions: Partial corrective action taken.

According to their one-year responses to our audit report, four of the five state agencies we sampled have implemented our recommendation. The four state agencies are CHP, Motor Vehicles, Caltrans, and Employment Development. CHP stated that it developed an e-waste disposition process and updated desk procedures and a standard operating procedure. These procedures include indicating whether any e-waste items were disposed of in accordance with CHP's e-waste program and defining all electronic devices as universal waste that require disposal only by authorized e-waste recyclers. Motor Vehicles stated that as of August 1, 2008, it does not allow any electronic equipment to be disposed of in a landfill. It also stated that it donates operable equipment to public schools and equipment in poor condition is disposed of through an approved recycler or an e-waste event that will properly dispose of the electronic equipment. Caltrans stated that it established a recycling program and, as part of this program, all electronic waste will be treated as universal waste and recycled. Employment Development stated that all staff responsible for the disposition of surplus items have been trained on the proper disposition of electronic equipment and e-waste. It also stated that it identified and is using an accredited e-waste recycler.

The fifth state agency—Justice—stated that it continues to educate staff regarding the proper disposal of all waste and surplus items, including e-waste. It also stated that it is still in the process of revising its property control manual that will further emphasize the proper disposal and documentation of all assets. Justice indicated that conflicting priorities and staff shortages have delayed completion of this manual until February 2010.

Finding #2: Opportunities exist to efficiently and effectively inform state agencies about the e-waste responsibilities.

Because all five state agencies in our sample had either discarded some of their e-waste in the trash or staff asserted that the agencies had done so, we concluded that some staff members at these agencies may lack sufficient knowledge about how to dispose of this waste properly. We therefore examined what information oversight agencies, such as the Department of Toxic Substances Control (Toxic Substances Control), the Waste Management Board, and the Department of General Services (General Services) provided to state agencies and what steps state agencies took to learn about proper e-waste disposal. Staff members at the five state agencies we reviewed—including those in charge of e-waste disposal, recycling coordinators, and property survey board members who approve e-waste disposal—stated that they had received no information from Toxic Substances Control, the Waste Management Board, or General Services related to the recycling or disposal of e-waste.

Further, based on our review of these three oversight agencies, it appears they have not issued instructions specifically aimed at state agencies describing the process they must follow when disposing of their e-waste. At most, we saw evidence that General Services and the Waste Management Board collaborated to issue guidelines in 2003. These guidelines state: "For all damaged or nonworking electronic equipment, find a recycler who can handle that type of equipment." However, the Waste Management Board indicated that state agencies are not required to adhere to these guidelines; General Services deferred to the Waste Management Board's opinion.

Alternatively, some state agencies we spoke with learned about e-waste requirements through their own research. For example, the recycling coordinator at Justice conducted her own on-line research to identify legally acceptable methods for disposing of e-waste. Through her research of various Web sites

at the federal, state, and local government levels, she determined which electronic devices Justice would manage as e-waste and located e-waste collectors who would pick up or allow Justice to drop off its e-waste at no charge.

While Justice's initiative is laudable, we believe that it is neither effective nor efficient to expect staff at all state agencies to identify e-waste requirements on their own. Some state agencies may not be aware that it is illegal to discard certain types of electronic devices in the trash, and it may never occur to them to perform such research before throwing these devices away. Further, having staff at each of the more than 200 state agencies perform the same type of research is duplicative.

The State could use any of at least five approaches to convey to state agencies more efficiently and effectively the agencies' e-waste management responsibilities. One approach would be to have Toxic Substances Control, the Waste Management Board, or General Services, either alone or in collaboration with one or more of the others, directly contact by mail, e-mail, or other method the director or other appropriate official, such as the recycling coordinator or chief information officer, at each state agency conveying how each agency should dispose of its e-waste. Other approaches include:

- Having the Waste Management Board implement a recycling program for electronic devices owned by state agencies.
- Including e-waste as part of the training related to recycling provided by the Waste Management Board.
- Having General Services, Toxic Substances Control, and the Waste Management Board work together to amend applicable sections of the State Administrative Manual that pertain to recycling to specifically include electronic devices.
- Modifying an existing executive order or issuing a new one related to e-waste recycling that incorporates requirements aimed at e-waste disposal.

To help state agencies' efforts to prevent their e-waste from entering landfills, we recommended that Toxic Substances Control, the Waste Management Board, and General Services work together to identify and implement methods that will communicate clearly to state agencies their responsibilities for handling and disposing of e-waste properly and that will inform the agencies about the resources available to assist them.

State Agencies' Actions: Corrective action taken.

The three oversight agencies included in our audit—General Services, Toxic Substances Control, and the Waste Management Board—stated that they have worked collaboratively to implement solutions for ensuring that e-waste from state agencies is managed legally and safely. General Services stated that the three entities emphasized the need for proper e-waste management to department directors and jointly provided training about recycling and e-waste disposal to approximately 200 state employees. Further, General Services stated that after receiving input from the other two entities, it amended the State Administrative Manual to clearly require state entities to dispose of irreparable and unusable e-waste using the services of an authorized recycler. The California Environmental Protection Agency also stated that Toxic Substances Control and the Waste Management Board coordinated with General Services to create an informational poster about e-waste for mounting by state agencies in locations where e-waste items may be handled and disposed of by staff.

Finding #3: State agencies report inconsistently their data on e-waste diverted from municipal landfills.

Most of the five state agencies in our sample reported diverting e-waste from municipal landfills. Waste diversion includes activities such as source reduction or recycling waste. In 1999 the State enacted legislation requiring state agencies to divert at least 50 percent of their solid waste from landfill

disposal by January 1, 2004. State agencies annually describe their status on meeting this goal by submitting reports indicating the tons of various types of waste diverted. A component of the report pertains specifically to e-waste. Between 2004 and 2007, four of the five state agencies in our sample reported diverting a combined total of more than 250 tons of e-waste. The fifth state agency, Caltrans, explained that it reported its e-waste diversion statistics in other categories of its reports that were not specific to e-waste.

Several factors cause us to have concerns about the reliability and accuracy of the amounts that these state agencies reported as diverted e-waste. First, these state agencies were not always consistent in the way they calculated the amount of e-waste to report or in the way they reported it. For example, Employment Development's amount for 2007 include data only from its Northern California warehouse; the amount did not include information from its Southern California warehouse. Also for 2007, the CHP included its diverted e-waste in other categories, while Caltrans did so for all years reported. Further, although instructions call for reporting quantities in tons, for 2007 Justice reported 3,951 e-waste items diverted. Moreover, diversion of e-waste does not count toward compliance with the solid waste diversion mandate, so state agencies may not include it. The Waste Management Board explained that e-waste is not solid waste, and thus state agencies are not required to report how much they divert from municipal landfills.

The Waste Management Board also allows state agencies to use various methods to calculate the amounts that they report as diverted. For instance, rather than conduct on-site disposal and waste reduction audits to assess waste management practices at every facility, a state agency can estimate its diversion amounts from various sampling methods approved by the Waste Management Board.

If the Legislature believes that state agencies should track more accurately the amounts of e-waste they generate, recycle, and discard, we recommended it consider imposing a requirement that agencies do so.

Legislative Action: Unknown.

We are not aware of any legislative action at this time.

Finding #4: State agencies' compliance with e-waste requirements receives infrequent assessments that are simply components of other reviews.

A state agency's decision regarding how to dispose of e-waste is subject to review by local entities, such as cities and counties, as well as by General Services. We found that the Sacramento County program agency and General Services perform reviews infrequently, and these reviews may not always identify instances in which state agencies have disposed of e-waste improperly.

Local agencies certified by the California Environmental Protection Agency are given responsibility under state law to implement and enforce the State's hazardous waste laws and regulations, which include requirements pertaining to universal waste. These local agencies, referred to as program agencies, perform periodic inspections of hazardous waste generators. The inspections performed by the program agency for Sacramento County are infrequent and may fail to include certain state agencies that generate e-waste. According to this program agency, which has the responsibility to inspect state agencies within its jurisdiction, its policy is to inspect hazardous waste generators once every three years. For the five state agencies in our sample, we asked the Sacramento County program agency to provide us with the inspection reports that it completed under its hazardous waste generator program. The inspection reports we received were dated between 2005 and 2008. We focused on the hazardous waste generator program because Sacramento County's inspectors evaluate a generator's compliance with the State's universal waste requirements under this program (universal waste is a subset of hazardous waste, and it may include e-waste). In its response to our request, the Sacramento County program agency provided seven inspection reports that covered four of the five state agencies in our sample. The Sacramento County program agency provided three inspection reports for Caltrans, one report for Justice, one for the CHP, and two inspection reports for Motor Vehicles. The program

agency did not provide us with an inspection report for Employment Development, indicating that this department is not being regulated under the program agency's hazardous waste generator program. The Sacramento County program agency explained that it targets its inspections specifically toward hazardous waste generators and not generators that have universal waste only, although the program agency will inspect for violations related to universal waste during its inspections. As a result, the Sacramento County program agency may never inspect Employment Development if it generates only universal waste.

The State Administrative Manual establishes a state policy requiring state agencies to obtain General Services' approval before disposing of any state-owned surplus property, which could include obsolete or broken electronic devices. In addition to reviewing and approving these disposal requests, General Services periodically audits state agencies to ensure they are complying with the State Administrative Manual and other requirements. General Services' reviews of state agencies are infrequent and it is unclear whether these reviews would identify state agencies that have inappropriately disposed of their e-waste. According to its audit plan for January 2007 through June 2008, General Services conducts "external compliance audits" of other state agencies to determine whether they comply with requirements that are under the purview of certain divisions or offices within General Services. One such office is General Services' Office of Surplus Property and Reutilization, which reviews and approves the property survey reports that state agencies must submit before disposing of surplus property. According to its audit plan, General Services' auditors perform reviews to assess whether state agencies completed these reports properly and disposed of the surplus equipment promptly. General Services' audit plan indicates that it audited each of the five state agencies in our sample between 1999 through 2004, and that it plans to perform another review of these agencies within the next seven to eight years.

When General Services does perform its reviews, it is unclear whether General Services would identify instances in which state agencies improperly discarded e-waste by placing it in the trash. General Services' auditors focus on whether state agencies properly complete the property survey reports and not on how the agencies actually dispose of the surplus property. For example, according to its audit procedures, General Services' auditors will review property survey reports to ensure that they contain the proper signatures and that the state agencies disposed of the property "without unreasonable delay." After the end of our fieldwork, General Services revised its audit procedures to ensure that its auditors evaluate how state agencies are disposing of their e-waste. General Services provided us with its final revised audit guide and survey demonstrating that its auditors will now "verify that disposal of e-waste is [sent] to a local recycler/salvage company and not sent to a landfill."

If the Legislature believes that more targeted, frequent, or extensive oversight related to state agencies' recycling and disposal of e-waste is necessary, we recommended that the Legislature consider assigning this responsibility to a specific agency.

Legislative Action: Unknown.

We are not aware of any legislative action at this time.

Finding #5: Some state agencies use best practices to manage e-waste.

During our review we identified some state agencies that engage in activities that we consider best practices for managing e-waste. These practices went beyond the requirements found in state law and regulations, and they appeared to help ensure that e-waste does not end up in landfills. One best practice we observed was Justice's establishment of very thorough duty requirements for its recycling coordinator. These requirements provide clear guidelines and expectations, listing such duties as providing advice and direction to various managers about recycling requirements, legal mandates, goals, and objectives. The duties also include providing training to department staff regarding their duties and responsibilities as they pertain to recycling. In addition, the recycling coordinator maintains current knowledge of recycling laws and works with the Waste Management Board and

other external agencies in meeting state and departmental recycling goals and objectives. Three of the remaining four state agencies in our sample did not have detailed duty statements specifically for their recycling coordinators. These three state agencies—the CHP, Motor Vehicles, and Employment Development—briefly addressed recycling coordination in the duty statement for the respective individual's position. Caltrans, the remaining state agency in our sample, indicated that it did not have a duty statement for its recycling coordinator. The creation of a detailed duty statement similar to the one used by Justice would help state agencies ensure that they comply with mandated recycling requirements, that they maintain and distribute up-to-date information, and that agencies continue to divert e-waste from municipal landfills.

A second best practice we noted was state agencies' use of recycling vendors from General Services' master services agreement. General Services established this agreement to provide state agencies with the opportunity to obtain competitive prices from prequalified contractors that have the expertise to handle their e-waste. For a contractor to be listed on General Services' master services agreement, it must possess three years of experience in providing recycling services to universal waste generators, be registered with Toxic Substances Control as a hazardous waste handler, and ensure that all activities resulting in the disposition of e-waste are consistent with the Electronic Waste Recycling Act of 2003. The master services agreement also lists recycling vendors by geographic region, allowing state agencies to select vendors that will cover their area. Many recycling vendors under the agreement offer to pick up e-waste at no cost, although most require that state agencies meet minimum weight requirements. Based on a review of their property survey reports, we saw evidence that the CHP, Caltrans, Justice, and Employment Development all used vendors from this agreement to recycle some of their e-waste.

We recommended that state agencies consider implementing the two best practices we identified.

State Agencies' Actions: Corrective action taken.

Regarding a thorough duty statement for a recycling coordinator, we mentioned in our audit report that Justice already follows this best practice. In their follow-up responses to our audit report, the other four entities—CHP, Motor Vehicles, Caltrans, and Employment Development—stated that they had created or updated the duty statements for their recycling coordinators or updated other comparable documents such as desk procedures and standard operating procedures.

Regarding the use of recyclers from the master services agreement, we noted in our audit report that CHP, Caltrans, Justice, and Employment Development all used vendors from the master services agreement. In its follow-up response to our audit report, Motor Vehicles stated that it had developed guidelines on the use of the DGS master service agreement for e-waste disposal and procedures for handling e-waste.

Office of Spill Prevention and Response

It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement

REPORT NUMBER 2008-102, AUGUST 2008

Office of Spill Prevention and Response's response as of August 2009

In November 2007 the Cosco Busan, an outbound container ship, hit a support on the San Francisco—Oakland Bay Bridge, releasing about 53,600 gallons of oil into the bay. This event, known as the Cosco Busan oil spill, focused public attention on California's Office of Spill Prevention and Response (spill office), a division of the Department of Fish and Game (Fish and Game). The spill office, created in 1991, is run by an administrator appointed by the governor, who is responsible for preventing, preparing for, and responding to oil spills in California waters.

The spill office, along with the contingency plans it oversees, fits into a national framework for preventing and responding to oil spills, with entities at every level of government handling some aspect of the planning effort. When an oil spill occurs, the response is overseen by a three-part unified command consisting of representatives from the spill office; the party responsible for the spill and its designated representatives; and the federal government, represented by the U.S. Coast Guard (Coast Guard), which retains ultimate authority over the response.

Finding #1: The spill office has fulfilled most of its oversight responsibilities related to contingency planning but coordination with local governments could improve.

The spill office has met most of its oversight responsibilities for contingency planning but could improve several aspects of its oversight role. Specifically, the California Oil Spill Contingency Plan (state plan), which the spill office maintains, has not been updated since 2001 and is missing elements required by state law. The state plan also lacks references to other plans or documents that would better integrate it into the overall planning system. In addition, the spill office has carried out its duties to review and approve local government contingency plans (local plans) and to provide grant funding. However, only six of the 22 local governments participating have revised their plans since 2004, and seven of the 16 remaining local plans have not been revised since 1995 or before. Further, the spill office reported that few local governments in the San Francisco Bay Area have regularly participated in other oil spill response planning activities.

The outdated state plan and local plans and weak participation by local governments in oil spill response planning activities may have led to problems with integrating state and local government activities into the Cosco Busan response.

Audit Highlights . . .

Our review of the Department of Fish and Game's Office of Spill Prevention and Response (spill office) found that:

- ***The spill office has met many of its oversight responsibilities; however, the California Oil Spill Contingency Plan is outdated and missing required elements.***
- ***Only six of 22 local government contingency plans were revised after 2003 and local participation in joint planning efforts has been low.***
- ***The spill office, the Governor's Office of Emergency Services, and private entities responding to the November 2007 Cosco Busan oil spill met their fundamental responsibilities.***
- ***The spill office's shortage of trained liaison officers and experienced public information officers led to communication problems during the Cosco Busan oil spill.***
- ***The spill office's lack of urgency in calculating the spill volume from the Cosco Busan may have delayed the mobilization of additional resources.***
- ***Reserves for the Oil Spill Prevention and Administration Fund (fund) totaled $17.6 million as of June 30, 2007, but are projected to drop by half over the next two years.***
- ***Payroll testing indicates the need to better assure that only oil spill prevention activities are charged to the fund.***

We recommended that the spill office regularly update the state plan and include references to sections of regional and area contingency plans that cover required elements. We also recommended that the spill office work with local governments to improve participation and should consider whether additional grant funding is needed.

Spill Office's Action: Partial corrective action taken.

The spill office said that it updated the state plan and shared it with external partners and the State Interagency Oil Spill Committee. The spill office indicated that it expects to adopt the plan by the end of 2009, after addressing external comments and revisions. In addition, the spill office said that in fiscal year 2008–09 it awarded 26 equipment and training grants totaling more than $650,000 to local government agencies. It noted that the contractor providing equipment and training had conducted three training sessions and would complete the remaining training sessions by October 31, 2009. Finally, language allowing for the inclusion of a local government representative in the unified command for spills in or near the San Francisco Bay has been added to the North Coast/San Francisco Bay and Delta/Central Area Contingency Plan.

Finding #2: The spill office is fulfilling most of its review and approval responsibilities for vessel contingency plans (vessel plans) and oil spill response organizations (response organizations).

The spill office has an established system for reviewing vessel plans and has ensured that vessel plans are approved before any vessel enters California waters. In addition, it has generally assured that annual tabletop exercises have been conducted for vessel plans, and has conducted drills to verify the rating and equipment information related to response organizations. However, the spill office has not always ensured that it receives and maintains documentation showing that annual tabletop exercises have been conducted for each vessel plan. In addition, the spill office does not require owners to submit reviews of their vessel plans after oil spills (postspill reviews) when applicable. The spill office's deputy administrator said that he believes the postspill review requirement is worthwhile, but that the spill office needs to consider whether it is reasonable to ask vessel owners to admit problems when the admissions may influence penalties.

We recommended that the spill office obtain and retain documentation related to completion of required tabletop exercises. We also recommended that the spill office determine whether postspill reviews are an effective means for identifying areas for plan improvement and then take steps to either ensure the reviews are submitted or eliminate them from its regulations.

Spill Office's Action: Partial corrective action taken.

The spill office said that it hired an additional drill coordinator who started in January 2009 and that its Drills and Exercises Unit is now fully staffed and trained on the need to retain documentation related to tabletop exercises, including keeping its database updated. The spill office also said that it has determined that its regulations requiring post-spill reviews are not effective. It believes that parties involved in an oil spill rarely share a candid review of their response actions because of pending legal actions. The spill office stated that it will seek to eliminate the requirements for post-spill reviews as part of a regulation package it expects to submit later this year and to be fully implemented during the first quarter of 2010.

Finding #3: State and private entities met their fundamental duties in the Cosco Busan response, but communication breakdowns caused problems.

The spill office, the Governor's Office of Emergency Services, and private contractors responding to the Cosco Busan incident performed the fundamental duties set forth in oil spill contingency plans. However, changes are needed in several areas to improve responses to future oil spills. We found that weaknesses in the spill office's handling of its liaison role during the initial days of the response, including a shortage of communications equipment and trained liaison officers, led to communication

problems with local governments. The counties we spoke with confirmed these problems and expressed dissatisfaction with the spill office's role as a liaison. In addition, the spill office's lack of urgency in reporting its measurement of the spill quantity, as well as the understated spill amounts reported by others, may have delayed the mobilization of additional response resources on the first day of the spill and contributed to the delayed notification of local governments.

We recommended that the spill office collaborate with area committees in California to identify potential command centers that are sized appropriately and possess all necessary communications equipment. Additionally, the spill office should continue with its plans to develop qualification standards for liaison officers and to train more staff for that role and should ensure that staff in its operations center provide all necessary support to liaison officers in the field. Moreover, the spill office should ensure that staff assigned as liaison officers participate in drills to gain experience.

We also recommended that the spill office collaborate with the Coast Guard to establish spill calculation protocols and establish procedures to ensure that staff promptly report spill calculations to the State on scene coordinator. Finally, the spill office should include spill calculations as part of its drills.

Spill Office's Action: Partial corrective action taken.

The area contingency plans for San Francisco and Los Angeles now contain a list of pre-identified incident command post locations, but the area contingency plan for San Diego does not. To improve the capabilities of liaison officers, the spill office also said that during calendar year 2008 it assigned liaison officers to 13 drills. In addition, the spill office stated that it updated its Operations Center Response Manual to reflect that the operation center is required to support liaison officers. Finally, the spill office said that it had established a protocol with the Coast Guard for oil spill quantification.

Finding #4: A lack of information officers with oil spill experience impaired the spill office's ability to assist with media relations and an insufficient number of trained responders may have hindered wildlife rescue efforts.

When the Cosco Busan spill occurred, an information officer experienced in oil spill response was not available to represent the State within the information center. This deficiency during the early days of the response appears to have hindered the dissemination of information about the role of volunteers in spill cleanups. Additional missteps by the Coast Guard, which managed the information center, and the spill office, appear to have contributed to the public's frustration with the clean-up effort and received widespread media attention. In addition, insufficient staffing may have hindered wildlife rescue efforts carried out by the spill office and the Oiled Wildlife Care Network (wildlife network) after the Cosco Busan spill. The number of staff mobilized for recovery and transportation of oiled wildlife remained lower than the general guidelines laid out in the California wildlife response plan for the first three days of the spill. Staffing increased only after the unified command loosened the requirements for hazardous waste training for volunteers participating in the response. The network director noted that the wildlife network has had difficulty maintaining trained personnel capable of serving on recovery teams because of the requirement to have 24 hours of hazardous waste training, supplemented by a yearly eight-hour refresher course.

We recommended that public relations staff in Fish and Game's communications office participate in nonresponsive spill drills, and that the spill office develop protocols to ensure that key information, such as the role of volunteers, is disseminated early in a spill response. We also recommended that the spill office ensure that the wildlife network identifies and trains a sufficient number of staff to carry out recovery activities. Furthermore, the spill office should continue to clarify with California Occupational Safety and Health Administration (Cal/OSHA) whether reduced requirements for hazardous waste training are acceptable for volunteers assisting on recovery teams, and should consider working with the wildlife network to ensure that this training is widely available to potential volunteers before a spill.

Spill Office's Action: Partial corrective action taken.

To improve the access and availability of information for specific spill incidents, the spill office said that it has developed an oil spill Web site that will launch when an incident occurs. The spill office also indicated that its volunteer coordinator and public information officer have created a volunteer outreach plan that includes pre-prepared press releases, fact sheets, improved application and information packages; a streamlined design of the Web page; and an improved brochure. In addition, the spill office noted that Assembly Bill 2911, approved by the governor in September 2008, adds proactive oiled wildlife search and collection rescue efforts as a primary focus of the wildlife network. This bill also requires the spill office administrator to ensure that the State has the ability to identify, collect, rescue, and treat oiled wildlife according to specified requirements, including training volunteers, stocking emergency equipment for rescue, and providing additional staffing. Funding for the wildlife network increased from $1.5 million for fiscal year 2008–09 to $2 million for fiscal year 2009–10. The wildlife network says that it has conducted a number of workshops, trainings, and refresher courses, and hired a wildlife field operations assistant to perform readiness activities during non-spill periods and support wildlife rescue efforts during oil spills. Finally, Cal/OSHA responded to the spill office's questions about the level of hazardous waste training necessary for wildlife rescue volunteers. Cal/OSHA indicated that the hazardous waste training could not be reduced from the level currently required, but that untrained volunteers could be used in support roles for wildlife rescue efforts.

Finding #5: The Oil Spill Prevention and Administration Fund (fund) has a high reserve balance and has paid for inappropriate personnel charges.

The amount of reserves in the Oil Spill Prevention and Administration Fund (fund) has increased significantly over the past several years, leading to a reserve of $17.6 million at June 30, 2007, or six months of budgeted expenditures for the next year. A fee increase without corresponding expenditure increases and failure of the spill office to annually assess the level of the reserve, as required by law, contributed to the high balance. A more reasonable reserve for a fund with a fairly stable level of expenditures would be about one and a half months, according to the spill office's deputy administrator.

Money in the fund can only be used for statutorily defined purposes relating to spill prevention activities. Based on our review of selected transactions and spending trends from fiscal years 2001–02 through 2006–07, we determined that expenditures charged to the fund generally appear to be consistent with the spill office's authorizing statute. However, our review of a sample of 30 employees' labor distribution reports (time sheets), as well as our interviews with spill office managers and employees, disclosed several instances in which employee salaries are being charged to the fund for time spent on general activities. These instances include spill office employees who sometimes perform general activities and, in one instance, an attorney who works for another Fish and Game unit and performs no spill prevention activities.

We recommended that the spill office annually assess the reasonableness of the reserve balance and the per-barrel fee on crude oil and petroleum products. Further, we recommended that the spill office and Fish and Game provide guidelines to employees concerning when to charge activities to the fund, take steps—such as performing a time study—to ensure that spill prevention wardens' time is charged appropriately, and discontinuing charges to the fund for the attorney we identified.

Spill Office's Action: Partial corrective action taken.

In January 2009 the spill office created a report projecting its fund balance through fiscal year 2012–13. At that time, the spill office said that it was making mid-year adjustments to offset decreased revenues from imported oil. Additionally, the spill office updated its time-reporting guidelines in February 2009 and stated that it has provided the guidelines to all employees. Finally, the spill office made adjustments so that the time of the attorney mentioned in the report is properly charged.

Finding #6: Restructuring of positions appears to have caused friction between the spill office and Fish and Game management.

Since 2000 Fish and Game has restructured 45.5 staff positions from the direct control of the spill office to other Fish and Game units. Although it does not appear to have affected the spill office's overall ability to carry out its mission related to the three largest restructured units, the limited problems we did identify, plus serious reservations by both the past administrator of the spill office and the current deputy administrator, suggested the need for a better understanding between Fish and Game management and the spill office on their roles and authority related to these employees.

We recommended that the spill office and other Fish and Game units discuss their respective authorities and better define the role of each in the management of spill prevention staff consistent with the administrator's statutory responsibilities and the other needs of Fish and Game.

Spill Office's Action: Pending.

The spill office said that it and Fish and Game have continued efforts to improve communications and cohesiveness on an internal level but offered no specifics on actions taken.

Department of Fish and Game

Its Limited Success in Identifying Viable Projects and Its Weak Controls Reduce the Benefit of Revenues From Sales of the Bay-Delta Sport Fishing Enhancement Stamp

REPORT NUMBER 2008-115, OCTOBER 2008

Department of Fish and Game's response as of October 2009

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to independently develop and verify information related to the Bay-Delta Sport Fishing Enhancement Stamp (fish stamp) program. Generally speaking, the audit committee's request focused on spending authority for the fish stamp revenues, the appropriateness of expenditures incurred in the program, and the required reporting to the fish stamp advisory committee (committee).

Finding #1: The Department of Fish and Game has not fully used revenues from the fish stamp program.

The Department of Fish and Game (Fish and Game) has not identified or pursued a course of action to ensure the full use of the revenues that it generates through sales of the fish stamp. Since the inception of the fish stamp program, Fish and Game has sold nearly 1.5 million annual fish stamps, generating $8.6 million in revenue and interest; however, as of June 2008, it had approved only 17 projects representing $2.6 million in commitments to funding. In addition, during the first two fiscal years in which it collected the fish stamp fee, Fish and Game did not request any spending authority to use the revenue to fund fish stamp projects. Further, during this same period Fish and Game did not reallocate unused funding from other accounts within the Fish and Game Preservation Fund (preservation fund), which holds money collected under state laws governing the protection and preservation of birds, mammals, fish, reptiles, and amphibians.

Therefore, it did not have the authority to spend any of the revenues generated to pay either for projects or for related administrative expenses. Even though it did request spending authority in fiscal years 2005–06 through 2007–08, Fish and Game still did not actively identify and fund projects up to the level of spending authority obtained. As a result, the balance in the fish stamp account continues to increase, and individuals who pay for fish stamps are not receiving the full benefit from their purchases.

To ensure that the fish stamp fulfills its intended benefit, we recommended that Fish and Game work with the committee to develop a spending plan that focuses on identifying and funding viable projects and on monitoring revenues to assist Fish and Game in effectively using the fish stamp revenues.

Audit Highlights . . .

Our review of the Department of Fish and Game's (Fish and Game) Administration of the Bay-Delta Sport Fishing Enhancement Stamp (fish stamp) program revealed the following:

- ***Fish and Game's use of the money collected from fish stamp sales has been limited.***
- ***Fish and Game and the fish stamp advisory committee (committee) have been slow in identifying and approving projects.***
- ***As of June 30, 2008, the fish stamp account had an unspent balance of over $7 million, although a portion of this amount was committed to approved projects that have not yet been funded.***
- ***Fish and Game does not have an accurate accounting of either its administrative expenditures or individual project expenditures for the fish stamp program.***
- ***Periodic reports Fish and Game provides to the committee do not include all the required information.***
- ***During fiscal years 2005–06 through 2007–08, Fish and Game spent an estimated $201,000 in fish stamp funds to pay for payroll costs and goods and services unrelated to fish stamp activities.***

Fish and Game's Action: Pending.

According to Fish and Game, the committee has received a spending plan for review and comment. The final spending plan is pending the director of Fish and Game's approval.

Finding #2: Weak controls limit Fish and Game's ability to monitor and report project activity.

Fish and Game does not have a sufficient system of internal or administrative controls to monitor fish stamp project activity. For example, the department's accounting system does not adequately track project expenditures. As a result, project expenditures are difficult to reconcile, and have been incorrectly charged to other funding sources. For example, in fiscal year 2005–06, Fish and Game approved using $50,000 in fish stamp funds to enhance its efforts to enforce laws against sturgeon poaching. However, Fish and Game actually charged the $50,000 to another of its funding sources. In another instance, the agreement for one fish stamp project required Fish and Game to pay a specified percentage of annual lease payments from the fish stamp account. However, according to a department official, Fish and Game paid this expenditure out of its general fund appropriation in fiscal year 2005–06 and 2006–07 rather than from the fish stamp account.

Additionally, information provided by Fish and Game to the committee both in periodic reports and in committee meetings is not always accurate or complete. Therefore, the committee is less able to make informed decisions on funding fish stamp projects.

To track and report project costs adequately, we recommended that Fish and Game improve the tracking of individual project expenditures by assigning each fish stamp project its own project cost account within the accounting system. Additionally, we recommended that Fish and Game require that project managers approve all expenditures directly related to their projects and periodically reconcile the records for their respective projects to accounting records and report expenditures to the staff responsible for preparing the advisory committee reports. We also recommended that Fish and Game reimburse its general fund appropriation for the lease payments that should have been paid from the fish stamp account.

Further, we recommended that Fish and Game should, at least annually, provide the committee with written reports of actual project expenditures and detailed information on project status as well as total administrative expenditures. Finally, we recommended that Fish and Game ensure that the information it communicates to the committee is accurate.

Fish and Game's Action: Corrective action taken.

Fish and Game reports that fish stamp staff now use appropriate index and PCA codes to identify fish stamp expenditures by project. Fish and Game also reported that project managers within the department now approve all expenditures and report to fish stamp staff.

Fish and Game told us that the appropriate adjustments have been made to reimburse the General Fund and charge the fish stamp account for the lease payments. Fish and Game stated that the advisory committee receives detailed financial overviews that include actual project and administrative expenditures, as well as project status. Lastly, Fish and Game reported that fish stamp staff are aware of the need to communicate accurately to the committee and are doing their utmost to provide accurate information.

Finding #3: Expenditures charged to the fish stamp account were inaccurate.

During fiscal years 2005–06 through 2007–08, Fish and Game charged expenditures totaling an estimated $201,000 to the fish stamp account that were unrelated to fish stamp activities. Although state law cites a broad definition of expenditures allowed under the fish stamp program, the expenditures we identified as inappropriate were payroll and invoice costs that were not related to any approved fish stamp project or administrative activity.

In addition, Fish and Game did not charge the account for certain administrative expenditures it incurred during the fish stamp program's first two fiscal years. Appropriate administrative expenditures would include costs for staff assigned to facilitate operating the program. These administrative expenditures also include indirect charges, which are department-wide costs proportionally distributed among all the department's funds or accounts. The manager of the program management branch stated that the administrative expenditures for these two years were charged to the nondedicated account within the preservation fund. Based on invoices provided by Fish and Game, we know that during fiscal years 2003–04 and 2004–05, Fish and Game incurred at least $18,000 in administrative expenditures for printing the fish stamps sold in 2004 and 2005. We also know that Fish and Game should have charged these costs to the fish stamp account but did not do so.

We recommended that Fish and Game provide guidelines to its employees to ensure that they appropriately charge their time to fish stamp projects. In addition, we recommended that Fish and Game discontinue the current practice of charging payroll costs to the fish stamp account for employee activities we identified as not pertaining to the program. Finally, we recommended that Fish and Game determine whether it inappropriately charged any other expenditures to the fish stamp account and make the necessary accounting adjustments.

Fish and Game's Action: Corrective action taken.

Fish and Game reports that fish stamp staff were provided with guidelines concerning when to charge activities to the fish stamp account. Additionally, Fish and Game also indicated that past inappropriate payroll charges to the fish stamp account have been corrected and that fish stamp staff currently review accounting reports for inappropriate charges. Fish and Game also stated it identified other inappropriate expenditures charged to the fish stamp account and made appropriate accounting adjustments.

Department of Fish and Game, Office of Spill Prevention and Response

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2006-1125 (REPORT NUMBER I2009-1), APRIL 2009

Department of Fish and Game's response as of October 2009

A high-level official formerly with the Office of Spill Prevention and Response (spill office) of the Department of Fish and Game (Fish and Game), incurred $71,747 in improper travel expenses she was not entitled to receive.

Finding #1: The official routinely claimed expenses to which she was not entitled, and other spill office officials allowed the official to receive reimbursements for travel expenses that violated state regulations.

From October 2003 through March 2008, Official A, a high-level official who subsequently left the spill office, improperly claimed $71,747 for commute and other expenses incurred near her home and headquarters. Specifically, for more than four years, Official A improperly claimed expenses associated with commuting between her residence and her headquarters, in violation of state regulations that disallow such expenses. Throughout the period we investigated, Official A resided in Southern California. Documents from Official A's personnel files and records from the State Controller's Office indicate that her official headquarters was in Sacramento. In addition, Official A was assigned office space in Sacramento and a state-issued cell phone with a Sacramento area code, and she regularly worked in the Sacramento spill office. However, Official A also claimed she worked from her residence—a practice that spill office officials apparently allowed—in an effort to legitimize expenses that otherwise she was not entitled to incur. Despite her claims, we found no legitimate business reason that required Official A to work from her home. The table summarizes the improper expenses that Official A claimed.

Table

Improper Travel Expenses Official A Claimed From October 2003 Through March 2008

TYPE OF IMPROPER EXPENSE	AMOUNT
Commute expenses for trips between residence and headquarters	$45,233
Commute-related parking and other expenses	7,608
Lodging within 50 miles of headquarters	10,286
Meals and incidentals incurred within 50 miles of headquarters	6,970
Lodging within 50 miles of residence	486
Meals and incidentals incurred within 50 miles of residence	236
Other improper expenses	928
Total	**$71,747**

Source: Bureau of State Audits' analysis of Official A's travel expense claims, vehicle logs, and flight records.

Investigative Highlights . . .

An official with the Department of Fish and Game (Fish and Game) claimed travel expenses to which she was not entitled:

- *The official improperly claimed travel expenses associated with commuting between her residence and headquarters for more than four years.*
- *The official contended that as a condition of her employment, another former high level official with the Office of Spill Prevention and Response allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento.*
- *Fish and Game staff never questioned the official about the actual location of her headquarters even though for the vast majority of the travel expense claims submitted, the official listed her residential address and wrote "same" for her headquarters address.*

We determined that Official A improperly claimed $52,841 for expenses related to traveling between her home and headquarters (commute expenses). These expenses consisted of $45,233 for flights between Sacramento and Southern California, $6,922 in parking expenses, and $686 for other commute-related expenses.

State travel regulations allow employees to seek reimbursement for parking expenses when going on travel assignments as part of their state duties; however, the trips we identified were part of Official A's commute. In addition, violating prohibitions in a state regulation, Official A improperly claimed $17,978 in lodging and meal expenses incurred within 50 miles of her home or headquarters. Furthermore, for 21 months during the period we reviewed, Official A improperly claimed $928 for Internet services at her residence.

Official A contended that as a condition of her employment, a former high-level official with the spill office, Official B, allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento. She therefore asserted that she was allowed to use state vehicles or state funded flights for commutes between her Southern California home and her Sacramento headquarters. In addition, Official A stated that she was allowed to claim lodging and per diem expenses in Sacramento, her official headquarters location. After Official B left state employment in 2003, other spill office officials, including officials C and D, approved Official A's travel claims. Officials C and D also allowed her to continue to commute at the State's expense and to receive reimbursements for expenses incurred near her official headquarters.

When we spoke with officials C and D, they indicated that they were aware that officials A and B had some form of informal agreement that allowed Official A to receive reimbursements for expenses incurred near her Sacramento headquarters. However, it appears that officials A and B never documented this arrangement. Even if the agreement had been formally documented, these actions violated state regulations, which do not allow state employees to receive payments for travel expenses incurred near their headquarters or for their commute between home and headquarters. We were unable to contact Official B to confirm his arrangement with Official A, but we believe that such an informal agreement likely existed. Nevertheless, Official B lacked the authority to make such an arrangement.

We recommended Fish and Game seek to recover the amount it reimbursed Official A for her improper travel expenses. If it is unable to recover all of the reimbursement, Fish and Game should explain and document its reasons for not seeking recovery.

Fish and Game's Action: Pending.

Fish and Game responded that it is investigating the activities related to this case and determining the appropriate legal and administrative actions warranted, including taking necessary corrective measures or disciplinary actions. In addition, after we provided Fish and Game with a draft copy of this report in April 2009, it produced a document signed by Official B in 2002 that requested Official A's position to be moved from Sacramento to a regional spill office location in Southern California. Fish and Game personnel approved this request; however, it appears this document was not forwarded to the Department of Personnel Administration as required for approval. Thus, the position change was never properly formalized. Further, Official B lacked the authority to allow Official A to receive payments for travel expenses incurred near her official headquarters in Sacramento or for her commute between home and headquarters.

Finding #2: Fish and Game should have been aware that Official A's travel expenses were improper.

Our investigation determined that Fish and Game should have been aware that Official A's travel expenses did not adhere to state regulations and were therefore improper. After Official A's travel claims were reviewed and approved by other high-ranking spill office officials, the spill office routed the travel claims to Fish and Game's accounting department for processing and reimbursement. For the vast majority of the travel expense claims that Official A submitted for reimbursement for the period

we reviewed, Official A listed on the claim forms her residential address and wrote "same" for her headquarters address. However, Fish and Game accounting staff never questioned Official A about the actual location of her headquarters. Nevertheless, we found eight examples among Official A's travel claims on which Fish and Game accounting employees asked Official A either to clarify the purpose of her trips or to provide other information. Although Fish and Game accounting staff did not question Official A specifically about the location of her headquarters, she responded at least twice to them that she had an office in Southern California and one in Sacramento. Because state regulations define headquarters as a single location, accounting staff should have elevated this issue to Fish and Game management to ensure that Official A's travel claims were appropriate.

We recommended that Fish and Game take specific actions to improve its review process for travel expense claims.

Fish and Game Action: Pending.

Fish and Game reported that it is reviewing the workpapers supporting our report and that it will provide a final response once it has completed its review.

Department of Parks and Recreation

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2008-0606 (REPORT I2009-1), APRIL 2009

Department of Parks and Recreation's response as of July 2009

We investigated and substantiated that a supervisor at the Department of Parks and Recreation (Parks and Recreation) failed to ensure that he paid a fair and reasonable price for goods costing $4,987 in violation of state law. Consequently, Parks and Recreation overpaid for the items by at least $1,253.

Investigative Highlight . . .

The Department of Parks and Recreation paid at least $1,253 more than necessary on a $4,987 purchase without obtaining competitive price quotes.

Finding: A supervisor did not solicit competitive bids from suppliers of goods and failed to pay a fair and reasonable price for goods he purchased.

The supervisor purchased a storage container in December 2007 to store supplies for several parks that he oversaw at the time. However, the supervisor did not obtain two price quotes using any of the five techniques described in the State Contracting Manual to ensure that the cost of the storage container was fair and reasonable, as required by state law. The supervisor later asserted to us that he contacted other suppliers but apparently did not document the price quotes he obtained. He also admitted to us that he had not obtained the "best possible price" for the storage container. As proof that the supervisor did not obtain a fair and reasonable price, just three weeks later another Parks and Recreation employee who worked for him obtained a price quote of $3,734 for a similar storage container. Thus, if the supervisor had obtained and documented fair and reasonable price quotes, Parks and Recreation could have avoided spending an additional $1,253 for the storage container.

The supervisor provided various reasons why he did not document other price quotes. According to the supervisor, he did not have sufficient staff and was overwhelmed by his workload. In addition, he stated that he had not received sufficient training at the time of the purchase. Parks and Recreation promoted the supervisor in January 2007. However, he indicated that he did not complete his three weeks of supervisor training until June 2008, six months after the purchase of the container.

We recommended that Parks and Recreation require its employees to adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under $5,000. We also recommended that Parks and Recreation provide timely training for new supervisors.

Parks and Recreation's Action: Corrective action taken.

In June 2009 Parks and Recreation reported that it gave the supervisor a letter of reprimand for failing to ensure that it paid a fair and reasonable price for the goods costing $4,987. In July 2009 Parks and Recreation provided a copy of its existing procurement

policy that addressed the requirement that its employees adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under $5,000. Parks and Recreation also stated that it provides courses on purchasing policies and procedures, which are required for all employees that make purchases, not just supervisors. Parks and Recreation noted that the supervisor received the training in April 2004 yet he still failed to ensure that he paid a fair and reasonable price for the goods previously cited.

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements

REPORT NUMBER 2009-043, NOVEMBER 2009

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun's response as of November 2009

The California Harbors and Navigation Code, Section 1159.4, requires the Bureau of State Audits to complete a comprehensive performance audit of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) by January 1, 2010, and a comprehensive financial audit by December 1, 2009. Our report combined both audits. Because state law does not specify the topics these audits should address, we identified and reviewed applicable state laws and regulations related to the form and function of the board and identified five areas on which to focus our review. Specifically, we focused on the licensing of pilots, investigations of incidents involving pilots, pilot training, board structure and administration, and the board's finances.

Finding #1: The board does not consistently adhere to requirements in state law when licensing pilots.

The board did not always ensure that applicants seeking original licensure as pilots completed the application process called for in state law before granting them pilot licenses. The application process requires that applicants seeking an initial pilot's license first receive a physical examination from a board-appointed physician. However, of the seven pilots seeking first-time licenses that we reviewed, the board issued licenses to three before the pilots had undergone the physical examination the law requires. In fact, one of these three piloted vessels 18 times before receiving the required physical examination. According to the board's president, there was a disconnect between the board and board staff regarding the application process and the necessary paperwork to be filed before licensure. He explained that in the past, the board had assumed that board staff were ensuring that all licensing requirements had been addressed before issuing a license. He stated that in the future, board staff will use a checklist to ensure that all application requirements are complete, and indicated that he or the board's vice president will review the checklist and supporting documentation to ensure that all requirements for licensure have been met. To the extent that the board does not adhere to this new process, it risks licensing an individual who does not meet the qualifications for a pilot, including being able to physically perform the job. This may increase the risk of injury to pilots and crews or damage to vessels and the environment.

Audit Highlights . . .

Our review of the form, functions, and finances of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) revealed the following:

- *The board did not consistently adhere to state law when licensing pilots. In one case, it licensed a pilot 28 days before he received a required physical examination; he piloted vessels 18 times during this period.*
- *The board renewed some pilots' licenses even though the pilots had received physical examinations from physicians the board had not appointed and, in one case, renewed a license for a pilot who had not had a physical examination that year.*
- *Of the 24 investigations we reviewed, 17 went beyond the 90-day statutory deadline for completion.*
- *The board did not investigate reports of suspected safety standard violations of pilot boarding equipment, as required by law.*
- *The board failed to ensure that all pilots completed required training within specified time frames.*
- *The board lacked a procedure, required in state law, for access to confidential information, and it released information to the public that included a pilot's home address and Social Security number.*

continued on next page . . .

- *The board did not ensure that some of its members and investigators filed required statements of economic interests.*
- *The board did not approve several changes to the rates pilots charge for their services, as required by law.*
- *The board paid for business-class airfare for pilots attending training in France, which may constitute a misuse of public funds.*

We also reviewed files of seven pilots whose licenses the board renewed and found that, contrary to state law, the board renewed one pilot's license even though the pilot had not undergone a physical examination that year. In part, this may have occurred because board regulations are inconsistent with state law, as they require less frequent physicals for younger pilots. According to the board's regulations, which have been in place since 1988, a medical examination is required annually only for pilots who are renewing a state license and who will be at least age 50 when the license expires. The regulations require less frequent medical examinations for pilots who are younger than age 50. However, state law changed in 1990 to require annual physicals for all pilots, regardless of age, and the board has not updated its regulations to reflect this change. According to the board's president, although the board was aware of the changes made to state law in 1990, it failed to interpret those changes to mandate that younger pilots must have more frequent physicals than those required under existing board regulations. By not ensuring that pilots receive their annual physical examinations as required by law, the board risks licensing an individual who is not fit to perform the duties of a pilot.

Further, the board could not provide documentation demonstrating that it had followed the law by appointing all the physicians it used to conduct physical examinations of pilots during the period of our review. As a result, the board granted six out of the 14 new licenses or license renewals we reviewed even though it had not appointed the physicians who conducted the physicals. If the board allows physicians that it has not appointed to examine pilots, it is not only out of compliance with its regulations but it also risks that physicians conducting annual physicals will not be familiar with the standards the board has adopted for pilot fitness. These standards outline conditions that would render a pilot permanently or temporarily not fit for duty. For example, suicidal behavior would result in a pilot being permanently excluded from duty, while cataracts would require that a physician reevaluate the condition before a pilot was allowed to return to duty.

We recommended that the board follow its recently established procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical examination, before the board issues or renews a license. Also, we recommended that the board establish and implement a procedure for approving and monitoring board-appointed physicians. Finally, we recommended that the board review and update its regulations regarding the frequency of pilot physical examinations to ensure they are consistent with state law.

Board's Action: Partial corrective action taken.

The board stated that it will continue to follow its procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical exam, before the board issues or renews a license. Further, the board reported that the process for approving and monitoring board-appointed physicians is in the rulemaking stages, with a projected completion for the second quarter of 2010. Similarly, the board told us that it has begun the rulemaking process to ensure its regulations that address the frequency of physical examinations are consistent with state law, and projects this process to be complete for the second quarter of 2010.

Finding #2: The board did not fully comply with state law regarding investigations.

Some of the board's investigations of incidents involving pilots were not timely or failed to follow specified procedures for granting extensions to the 90-day deadline required by state law. The board's Incident Review Committee is responsible for investigating, with the assistance of one or more investigators, navigational incidents, misconduct, and other matters involving pilots and presenting reports on these incidents to the board. We reviewed the 24 incidents reported by the port agent to the board between January 1, 2007, and March 31, 2009, and investigated by the Incident Review Committee, and we noted that 17 required extensions because the Incident Review Committee did not complete its investigation within 90 days. Of these 17, the board did not grant an extension in two cases and granted an extension after the 90-day deadline in another five. After reviewing the seven cases we identified, the board's president stated that beginning in October 2009, the board's agenda for its monthly meetings will include the 90-day deadline to help remind the Incident Review Committee and the board of the need to either present the results or make a timely request for an extension. Without timely investigations, the board risks having additional incidents occur, because pilots are generally allowed to continue working while the board completes its investigation.

Further, the board did not consistently report the reasons for granting extensions for an investigation. We noted that, of the 17 investigations requiring an extension, eight were extended because the investigations were incomplete, while four were extended with no reason or justification given. The board extended the remaining five for other reasons, including an Incident Review Committee member being unavailable and the board asking for additional information. If the board had requested the reasons for the delays from the Incident Review Committee, it would have been better able to assess the cause of the delay and determine how to mitigate such delays in the future.

Also, the board has not yet developed the regulations describing qualifications for its investigators, as required by law. In February 2009 the board approved draft standards for use in contracting with investigators. In August 2009 the board approved a version of the standards and directed staff to begin the rulemaking process to adopt these standards. Until the board adopts and enforces standards for its investigators in accordance with state law, it may risk retaining investigators who are not qualified to conduct thorough and timely investigations.

Finally, the board has not complied with a state law requiring the inspection of pilot boarding equipment, such as pilot ladders or hoists, in response to reports of suspected safety standard violations. The board's president stated that the former executive director—the board's executive director resigned effective October 30, 2009, and thus, we refer to him as the "former executive director"—acknowledged that he had not dispatched investigators to inspect pilot boarding equipment that had been reported to be in violation of safety standards during the period of our review. He explained that the former executive director had instead relied upon information provided by the pilots regarding the reported equipment. The board president explained that as of October 2009, he has requested the chair of the board's Rules and Regulations Committee to study the issue and make recommendations to the board, which may result in the board seeking changes to state law as it relates to investigating suspected violations. Nevertheless, pursuant to the California Constitution, unless or until an appellate court invalidates the law requiring the board to inspect suspected safety standard violations of pilot boarding equipment, the board must comply with the statute.

We recommended that the board implement procedures to track the progress of investigations, including a procedure to identify those investigations that may exceed the 90-day deadline established in law, and ensure that there is proper justification and appraisal for investigations that require more than 90 days to complete. We also recommended that the board develop and enforce regulations establishing minimum qualifications for its investigators, as state law requires, and investigate reports of safety standard violations regarding pilot boarding equipment.

Board's Action: Pending.

The board stated that it has implemented a system of tracking the progress of open investigations by requiring a monthly report on the status of each open investigation and the expected reporting date and by tracking the expiration of the 90-day period in which investigation reports are to be presented, absent a timely extension for good cause. Further, the board reported that it will review any requests for an extension to determine the reason and whether the underlying cause for the request can be addressed to avoid unnecessary delays in the future. The reasons for the request for an extension will be recorded in the board's minutes. Moreover, the board stated that the adoption of minimum standards for commission investigators is currently in the rulemaking stages and project this process to be complete by the end of March 2010. The board also stated that all reports of safety standard violations it receives concerning pilot boarding equipment will be investigated in accordance with state law. Where feasible, the board explained, a commission investigator will be assigned to personally inspect the equipment for compliance with applicable federal and international standards. Where that is not feasible (such as when the report is received after a vessel has departed port), the investigation will be based on such information as is available.

Finding #3: The board has not ensured that all pilots completed the required training within specified time frames.

The board's regulations require every pilot to attend a combination course, which must include topics relating to emergency maneuvering, emergency medical response, ship handling in close quarters, and regulatory review, at least every three years. We reviewed the training records of seven pilots whose licenses had been renewed at least three times as of April 30, 2009, and determined that two had last attended the required training in April 2005 and did not attend again until October 2009, more than four years later. According to the board's former executive director, at the time these pilots were originally scheduled for training, the board was pursuing a regulatory change that would have allowed pilots to attend the required training every five years instead of every three. He explained that the board had relied on the proposed change to regulations and delayed the attendance of these two pilots. According to the board's president, changing the requirement to every five years would have been more in line with the training cycles of other pilotage grounds around the country. However, he stated that the board chose not to reduce its training requirements because the change might have been perceived by members of the public as potentially reducing the safety of pilotage on the waters in the board's jurisdiction. Because these regulatory changes were only proposed, the board inappropriately delayed training for these pilots beyond the existing legal deadline.

Additionally, state law mandates that the board require the institutions it selects to provide continuing education for pilots to prepare an evaluation of the pilots' performance and to provide a copy to the Pilot Evaluation Committee (to the board beginning in 2010). We reviewed the contracts between the board and the continuing education institutions but did not identify a requirement for the institutions to provide evaluations of pilot performance to the Pilot Evaluation Committee. The board's president asserted that the Continuing Education Committee will negotiate with the training institutions to develop an appropriate evaluation process. To comply with state law, the board must follow through with its intention to require training institutions to prepare and submit evaluations of pilots' performance. Without these evaluations, the board lacks assurance as to whether a pilot successfully completed the required training program or whether that pilot will need additional training before being allowed to navigate vessels as a licensed pilot.

To ensure that all pilots complete the required training within the specified time frames, we recommended that the board schedule pilots for training within the period specified in state law and board regulations and include in its contracts with institutions providing continuing education for pilots a provision requiring those institutions to prepare an evaluation of pilots' performance in the training.

Board's Action: Partial corrective action taken.

The board implemented a checklist to track each pilot's training cycle and the expiration dates for the three-year and five-year training periods to ensure timely attendance at board-mandated training. The board told us that procedures for obtaining limited extensions to complete training under specified circumstances are in the rulemaking stages, with a projected completion date in the second quarter of calendar year 2010. The board also stated it is currently working with its continuing education providers to develop performance evaluations, which will be incorporated in future contracts.

Finding #4: The board risks not having enough pilot trainees to replace retiring pilots.

To help it forecast the need for additional trainees, the board conducted six surveys between June 2006 and July 2009, asking all pilots to indicate when they intend to retire. Of the 58 pilots who responded to the board's most recent survey, which it conducted in June 2009, three indicated that they plan to retire by January 1, 2010, and an additional five stated that they plan to retire by January 1, 2011. However, because the length of time it takes a trainee to complete the pilot training program is typically much longer than the length of time between a pilot's retirement announcement and the effective date when the pilot may begin receiving a pension, the board runs the risk that the number of licensed pilots will decrease if more pilots choose to retire than the number of trainees completing the training program.

To ensure that it is able to license the number of pilots it has determined it needs, we recommended that the board continue to monitor its need for additional trainees to replace those who retire.

Board's Action: Corrective action taken.

The board stated that it has developed a comprehensive process for evaluating future pilotage needs and will continue to conduct regular retirement surveys of existing pilots. The board currently has eight trainees in various stages of training and two qualified candidates on its eligibility list. The board expects to hold further selection examinations in the second quarter of calendar year 2010, which will provide a new eligibility list that should meet the board's needs for training an adequate number of future pilots through the summer of 2013.

Finding #5: The board lacks controls over confidential information.

A state law effective January 1, 2009, requires the board to develop procedures for access to confidential or restricted information to ensure that it is protected. However, as of September 2009, the board had not yet established such procedures. Meanwhile, without such procedures, the board could inadvertently share confidential information with the public. In fact, the board did release confidential information when the board's president requested that board staff fax certain information about one of its pilots to an independent, nonprofit association's counsel. This information included the pilot's home address on one document and Social Security number on another.

Also, until October 2009, board staff, as well as board members, used nonstate e-mail accounts to conduct state business, which could jeopardize the board's ability to respond to requests for public records and to protect confidential information. According to the board's president, board staff used nonstate e-mail accounts beginning in 1994. Additionally, he stated that board members and board staff who had previously used nonstate e-mail accounts have not transferred old data into their new state accounts.

We recommended that the board create a process, as state law requires, for accessing confidential information, such as board records containing confidential information on board members, board staff, or pilots and that it consistently use state-based e-mail accounts when conducting board business, including transferring old e-mail records to their new accounts.

Board's Action: Partial corrective action taken.

The board reported that it is developing written procedures for the treatment of confidential information and the handling of requests for such information consistent with state law, and expects to have them completed by the end of January 2010. Further, as of November 2009, board members and staff are using state e-mail accounts. Also, after joining the Business, Transportation and Housing Agency, the board started a step-by-step technical infrastructure change. In that process, the board obtained state-based e-mail accounts for all board members and staff. The board expects that board members and staff will be conducting all board business on their state-based e-mail accounts by the end of December 2009.

Finding #6: The board lacks controls over filings of statements of economic interests and required ethics training.

We identified several instances in which the board did not comply with legal requirements regarding the filing of statements of economic interests. We examined the files for the 10 board members and two board staff who served from January 1, 2007, through March 31, 2009, and found four instances in which the board did not comply with this regulation. According to the board's president, the board's staff have not consistently followed up to ensure that all required statements of economic interests have been completed and that board files include a copy. Without complete statements of economic interests, neither the board nor the public has access to information that would reveal whether board members may have conflicts of interest.

Additionally, according to the board's president, the board did not require its investigators to file statements of economic interests. Board regulations require consultants to file statements of economic interests, although the executive director may make a determination in writing that a particular consultant does not meet the regulatory criteria necessary to file a statement. None of the four investigators under contract during all or part of the period we reviewed filed statements of economic interests, nor did the former executive director determine in writing that board investigators are not required to comply with the disclosure requirement. The former executive director explained that he recalled discussing this issue with legal counsel and that they had determined that investigators are not consultants; rather, they are "finders of facts" and therefore do not participate in the Incident Review Committee's decision-making process. Therefore, he explained, they do not need to file statements of economic interests, and no written exemption is required. However, the board's regulations require a written exemption from the executive director if consultants, such as investigators under contract to the board, are not required to file statements of economic interests. According to the board's president, the board did not seek formal advice on this determination from the Fair Political Practices Commission, the state authority in this area.

Until recently some board members and staff had not received training in state ethics laws and regulations, as required by law. However, according to the board's president, not all board members or board staff had received such training prior to 2009. He stated that the board members were not aware of the requirement. Subsequent to our inquiry, all of the board members and staff received ethics training by August 2009.

We recommended that the board establish a formal procedure to complete and maintain copies of required statements of economic interests and complete the process of ensuring that investigators complete statements of economic interests. When there are questions as to whether other consultants

should file such statements, the board should seek advice from the Fair Political Practices Commission. Finally, the board should develop procedures to ensure that board members and designated staff continue to receive required training, such as training in state ethics rules.

Board's Action: Partial corrective action taken.

The board developed a checklist to ensure that annual, as well as assuming and leaving office, statements of economic interest are filed and that copies are maintained in office files in accordance with the state's political reform laws and the conflict-of-interest code provisions. The board also stated it is developing a package of comprehensive ethics training and a checklist with dates of completion for each board member and staff, with a projected completion date of the end of January 2010.

Finding #7: The board did not adhere to some requirements regarding administrative processes.

We observed that the board did not properly provide notice on its Web site of two recent meetings at least 10 days in advance, as the Bagley-Keene Open Meeting Act (act) requires. On June 16, 2009, the board's Web site indicated that the next board meeting would be held on June 25—nine days later—but the agenda posted to the board's Web site was for the prior month's meeting on May 28. Subsequently, on July 15, 2009, the board's Web site announced the board meeting held in June, even though a July meeting was scheduled for July 23, 2009—less than 10 days from the date we reviewed the Web site. The board has a contract with the Association of Bay Area Governments to maintain, in part, the board's Web site. However, one provision of the contract enables board staff to update meeting information on the board's home page and to post agendas, minutes, and news items through an administrative page. According to the board's assistant director, the board had been using the administrative page until a staffing change in March 2009. Subsequently, the board requested that the Association of Bay Area Governments update the board's meeting and agenda notices on the Web site. However, in both June and July, board staff made this request on the last day the board would have been in compliance with state law. The assistant director stated that in October 2009, board staff received training in how to update the Web site using the administrative page, and she explained that the board intends to reinstate its previous practice of having board staff, rather than a contractor, update meeting information on the Web site. Without proper notice, members of the public may not be aware of upcoming board meetings or of the topics the board will discuss at those meetings.

Further, until recently the board had not complied with state law requiring it to formally review the executive director with respect to his or her performance on the Incident Review Committee at least once each year. According to the board's president, the evaluation covering the former executive director's performance on the committee during July 1, 2007, through June 30, 2008, was the first the board had conducted, yet the board had employed the former executive director since 1993. Subsequent to the first evaluation, the board conducted two additional evaluations of the former executive director for the periods covering July 1, 2008, through December 31, 2008, and January 1, 2009, through June 30, 2009. The board's president explained that the board has not formalized its process for reviewing the performance of the executive director, but he expects the board to settle on a formal process and document it appropriately within six months after hiring a new executive director. If the board does not have a process in place when it hires a new executive director, it will not have the mechanism to provide formal feedback on his or her performance on the Incident Review Committee.

We recommended that the board establish processes to ensure that its Web site contains timely and accurate information about its meetings, as required by law, and that it formalize a procedure for evaluating the executive director's performance on an annual basis.

Board's Action: Partial corrective action taken.

The board stated that it has implemented training of its staff in the update and maintenance of the board's Web page displaying notices of its meetings. The board told us that information on the Web site will be reviewed routinely to ensure that timely and accurate meeting information is provided in accordance with state law. Also, the board reported that it is currently in the process of selecting a new executive director and anticipates that the review process and the performance appraisal form used for the past two years will be refined and formally adopted as part of the process for evaluating the new executive director.

Finding #8: The board's recordkeeping needs improvement.

The board does not always maintain adequate records to demonstrate that it complies with state law. During the period of our review, January 1, 2007, through March 31, 2009, there were 24 reported incidents. Of the 24 incidents, we judgmentally selected four to determine whether their respective files contained the required information and noted that one did not contain the Incident Review Committee's opinions and recommendations or the board's actions based on these recommendations.

Additionally, we determined that the board is inconsistent in announcing pilots whose licenses the board renewed. Further, board staff did not maintain copies of licenses issued after 2000 in the pilots' files. We found that the board reported license renewals in its minutes for meetings held in February and April of 2007 and 2008 but did not report any renewals in board minutes for February or April 2009. Nevertheless, several pilots had licenses up for renewal in those months. According to the board's president, the board generally announces renewals at board meetings and stated that the two instances we found in which such announcements were not recorded in meeting minutes were due to an inexperienced staff person not reporting such announcements in the minutes. Without a proper record in the board's minutes or copies of each pilot's annual license renewal in the files, however, the board may not be able to demonstrate that a pilot held an active license during a given year.

We recommended that the board establish formal procedures related to document retention in files regarding investigations, determine and document what it needs to include in minutes of the board's meetings, and ensure that copies of license renewals are placed in the pilots' files.

Board's Action: Pending.

According to the board, it is developing written procedures regarding document retention, including checklists of what should be in each investigation file, such as the Incident Review Committee's opinions and recommendations and the board's actions, and how long each file is to be retained in accordance with state laws. Completion date is projected for the end of March 2010. Also, the board stated that it is developing written guidelines for the preparation of minutes for the board's meetings, including the inclusion of information on the issuance and renewals of pilot licenses, and expects to have those guidelines in place by the end of January 2010.

Finding #9: The board lacks internal policies and controls over pilotage rates and its revenues.

State law sets the rates vessels must pay for pilotage service in San Francisco, San Pablo, Suisun, and Monterey bays, but allows a portion of the rate, called the "mill rate," to change each quarter, based on the number of pilots licensed by the board. According to the Bar Pilots' rate sheet, the mill rate changed five times between January 2007 and June 2009. We expected to find that the board had authorized the changes to this rate; however, the board's minutes do not reflect any such activity. Instead, according to the board's president, the board receives a copy of the Bar Pilots' rate letter each quarter, and these rates reflect changes to the mill rate. The board's president stated that the law does not require the board to take action to approve these rate changes. However, we disagree, as the law clearly states that

rate adjustments will take effect quarterly "as directed by the board." By not reviewing and approving such adjustments, the board is not in compliance with the law and risks that the Bar Pilots may miscalculate the rate.

The board also does not consistently ensure that an independent audit of the pilot pension surcharge is conducted, and there is no audit in place for the pilot boat surcharge. Although an independent auditor completed an audit of the pilot pension surcharge for 2007, it did not complete an audit of the pilot pension surcharge for 2008, according to the board's president, due to the auditor's staffing changes and to a lack of communication between the board and the independent auditor. Further, the board's president explained that the board had not considered having a similar audit conducted of the pilot boat surcharge, which state law established to recover the costs of obtaining new pilot boats or extending the service life of existing pilot boats. Without such annual audits, the board lacks assurance that the Bar Pilots are collecting and spending funds from these surcharges in accordance with state law.

The board also lacks a process to verify the accuracy of the surcharge amounts the Bar Pilots collect and remit to the board on a monthly basis. State law requires pilots to submit to the board, and the board to maintain, a record of accounts that includes the name of each vessel piloted and the amount charged to or collected for each vessel. Each month, the Bar Pilots remit the total amount of the board operations, continuing education, and training surcharges collected and include a report detailing all of the pilotage fees and surcharges billed and collected. We reviewed eight monthly reports and determined that they did not contain all information required by law and, in one case, the report was missing pages. The board's president explained that a review of the monthly reports was not done in the past because the board had limited staff to conduct such reviews. However, given that the board is required to maintain complete records of accounts, we believe it needs to take the steps necessary to ensure that the Bar Pilots' reports contain the required information, such as information pertaining to the three surcharges the Bar Pilots collect and remit to the board.

Additionally, the board did not receive all revenues for the surcharge to fund training new pilots (training surcharge), as required by law. We determined that the inland pilot, the one pilot who is not a member of the Bar Pilots and who guides vessels between the bays and the ports of West Sacramento and Stockton, was not collecting the training surcharge on the vessels he piloted. According to the board's president, it was both the inland pilot's and the board staff's understanding that the training surcharge does not pay for the training of future inland pilots. However, state law requires the training surcharge to be applied to each movement of a vessel using pilot services, and therefore the inland pilot should collect this surcharge.

We recommended that the board review and approve any quarterly changes made to that portion of the pilot fee based on the mill rate. Further, the board should establish a requirement for an annual, independent audit of the pilot boat and pilot pension surcharges and establish a monthly review of the revenue reports it receives from the Bar Pilots. Additionally, we recommended that the board instruct the inland pilot to collect and remit the training surcharge and report these collections to the board.

Board's Action: Partial corrective action taken.

The board stated it will include in its quarterly review of other surcharge rates a review and approval of any changes in the mill rate authorized under state law. The board also stated it will seek authority to contract for annual audits of all surcharges on pilotage fees. Further, the board asserted that it commenced a monthly review of the revenue reports from the San Francisco Bar Pilots, including verification of the amount on the accompanying check and completeness of the report. The board demonstrated that it instructed the inland pilot to begin collecting and remitting the pilot trainee training surcharge and the inland pilot is doing so. The inland pilot has acknowledged the instruction and will commence collection of the surcharge beginning with his next trip.

Finding #10: The board lacks internal policies and controls over its expenditures.

We determined that the board does not track its expenditures in a manner that is consistent with state law. In its financial statements, the board tracks expenditures in only two categories—operations and training—combining expenditures for the training program and for pilots' continuing education. However, state law requires that the board spend the money collected from the continuing education and training surcharges only on expenses directly related to each respective program. Additionally, the board maintains a reserve balance, but its financial statements do not specify the amounts of this balance that relate to its operations, training, and continuing education surcharges. According to the board's president, for many years the board wanted to establish different categories in its formal accounting records in order to track the expenditures related to each surcharge independently. However, he added that neither the Department of Consumer Affairs nor the Department of Finance tracked the expenditures as the board desired and thus, in order to generate the information necessary to comply with statutory requirements, the board maintained its own internal accounting of expenditures within each surcharge. He stated that this internal recordkeeping system is not reconciled to state reports. Unless it tracks expenditures relevant to each surcharge separately in its formal financial reports, the board cannot demonstrate that it is complying with the law and risks miscalculating the rate of the surcharges in the future.

In addition, the board does not have written contracts with the physicians it has appointed to conduct physical examinations of pilots. Written contracts between the board and its appointed physicians would outline the duties of the physicians under contract and ensure consistency in the physical examinations of pilots. Additionally, because these contracts would be subject to competitive bidding as described in state law, the board would have to solicit bids for these contracts. For example, we reviewed board payments to one medical clinic and determined that they totaled more than $14,000 and $26,000 in fiscal years 2007–08 and 2008–09, respectively, amounts equal to or greater than the $5,000 that is exempt from competitive bidding under state law. According to the board's president, the board has not contracted with the physicians; however, as of October 2009, he stated that the board is defining criteria for the approval of physicians and for use in the contracting process in the future. He added that the board's Pilot Fitness Committee began to address this issue in April 2009 and hopes to be able to recommend criteria to the board by the end of 2009.

We recommended that the board develop procedures to separately track expenditures relevant to the operations, training, and continuing education surcharges. Additionally, we recommended that the board competitively bid contracts with physicians who perform physical examinations of pilots.

Board's Action: Pending.

The board stated that, while board staff has been tracking separately the revenues and expenditures related to the board operations, continuing education and trainee training surcharges, it has requested the sister state agency providing administrative support to the board to establish a formal tracking process that will comply with state law. It expects to have that process in place by the end of January 2010. Further, the board stated it will begin the competitive bid process upon its adoption of the criteria for board physician qualifications, appointment process and operational structure, which it expects to adopt in the second quarter of 2010.

Finding #11: The board made some expenditures that could constitute a misuse of state resources.

According to state law, state agencies cannot use state funds to pay for expenses used for personal purposes. However, in a contract between the board and the Bar Pilots covering July 1, 2006, through June 30, 2011, the board requires that the Bar Pilots purchase round-trip, business-class airline tickets for pilots attending training in Baltimore, Maryland, and at the Centre de Port Revel in France, and it requires that the board reimburse the Bar Pilots for these expenses. Business-class air travel provides the same basic service as economy class, but with added amenities of value to the traveler. We reviewed one invoice from the Bar Pilots requesting reimbursement for travel to the Centre de Port Revel in France and noted that business-class airfare cost an average of $6,200 for each pilot in August 2007.

Using similar travel dates in August 2009, including the airline used by the pilots, we determined that, on average, purchasing economy-class tickets offered by three airlines to Lyon, France—the airport five of the six pilots in our sample used—could reduce costs by roughly 40 percent. According to the board's president, it is private industry practice to fly a mariner first class—which offers amenities beyond business class—when he or she must travel internationally to transfer onto another vessel. For example, a mariner leaving a vessel in Hong Kong to join a vessel in San Francisco would fly first class. However, the board is a regulatory agency and not a private shipping company. Such an expense, when an equivalent and less expensive alternative is available, is not appropriate and may constitute a misuse of state resources, which the state Constitution prohibits.

Also, the board's provision of free parking to current employees raises questions as to whether the parking expenditures, which are primarily for private benefit, constitute a misuse of state resources.

We recommended that the board cease reimbursing pilots for business-class airfare when they fly for training and amend its contract with the Bar Pilots accordingly; and cancel its lease for parking spaces or require its staff to reimburse the board for their use of the parking spaces.

Board's Action: Pending.

The board stated that its president has requested, and the chair of the board's Pilot Continuing Education Committee has agreed to schedule, a meeting of the committee to consider and recommend to the board alternatives to mandating and reimbursing business-class travel for training. According to the board, that meeting is scheduled for January 13, 2010, and the next manned-model training session begins June 21, 2010, giving the board ample time to consider and implement recommendations from the committee. Also, the board concurred with the underlying premise that parking spaces rented by the board must be used for a legitimate public purpose and that, to the extent that staff use those spaces when not otherwise in use, staff must reimburse the board.