



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Charlie Janssen
State Auditor

Charlie.Janssen@nebraska.gov
PO Box 98917
State Capitol, Suite 2303
Lincoln, Nebraska 68509
402-471-2111, FAX 402-471-3301
www.auditors.nebraska.gov

January 24, 2017

Kyle Schneweis, Director
Nebraska Department of Roads
1500 Nebraska Hwy 2
Lincoln, NE 68502

Dear Mr. Schneweis:

This letter is provided pursuant to AICPA Auditing Standards AU-C Section 265, which permits the early communication of audit findings due to their significance and the need for corrective action. The audit work addressed herein was performed as part of the fiscal year ended June 30, 2017, Comprehensive Annual Financial Report (CAFR) audit. This communication is based on our audit procedures and related activity through December 31, 2016. Because we have not completed our audit of the fiscal year 2017 CAFR, additional matters may be identified and communicated in our final reports.

In planning and performing our audits of the financial statements, the Auditor of Public Accounts (APA) considered the State's internal control over financial reporting (internal control) as a basis for designing audit procedures for the purpose of expressing our opinions on the financial statements of the State, but not for the purpose of expressing an opinion on the effectiveness of the State's internal control. Accordingly, we do not express an opinion on the effectiveness of the State's internal control.

We noted certain internal control or compliance matters related to the activities of the Nebraska Department of Roads (NDOR) or other operational matters that are presented below for your consideration. The following comment and recommendation, which has been discussed with the appropriate members of the NDOR and its management, is intended to improve internal control or result in other operating efficiencies.

Draft copies of this letter were furnished to the NDOR to provide management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time, but it will be verified in the next audit.

Background Information

In its 2007 Edition of the Standard Specifications for Highway Construction, the NDOR defined cold milling in Section 510.01, Description, as “removing and salvaging existing surfacing material as shown in the plans.” According to its website at, www.roads.nebraska.gov/contact-us, under Frequently Asked Questions, milling is described as follows:

Milling is the process of removing high spots, bumps and ruts from the road's surface for a more even surface, and is done for the safety of the driving public. It can be done as a stand alone project or in connection with a resurfacing project. Milling promotes proper drainage to prevent standing water and/or ice from building up on the road which can cause hydroplaning or loss of directional control.

The website explains further the process for milling, as follows:

The Department of Roads has a four member crew that specializes in fine profile milling for state maintenance projects, and if needed, they can be any place in the State within 48 hours. The crew coordinates with each of NDOR's eight districts to determine what milling projects are needed, and a schedule is arranged. The milling crew works on shorter maintenance projects. Longer projects and milling connected with resurfacing projects are frequently done by contractors. While in each district, the milling crew works with the maintenance crew from each supervisor's area. The maintenance crew provides the traffic control, water trucks, broom operator and trucks to haul the millings to stockpile sites. The millings are used to build up shoulders, fill washout and occasionally for blade patching if the material is good enough. Some may also be used in the yards or on gravel/dirt roads for sub-grade material.

As noted above, the existing surface material that is salvaged from this process is stockpiled and used for many purposes, including building up road shoulders, filling washouts, blade patching if the material is in good condition, and use in the yards or on dirt or gravel roads for sub-grade material. In some cases the salvaged material is stored on the State highway right-of-way. Because of these many uses, the salvaged millings have a value.

In Section 506.00 of the NDOR's 2002 Construction Manual, the proper handling of millings is explained as follows:

Each District remains responsible for specifying the disposition of millings. Specifications and special provisions need to be crystal-clear as to exactly which millings are available and at what cost.

Comment and Recommendation

The APA received concerns regarding the disposition of millings used by the NDOR's District 4 for work completed on Highway 70, northeast of Ord, Nebraska, in August 2016. Based upon our review, the APA offers the following comment and recommendation:

Unauthorized Use of Millings

The NDOR lacks adequate policies and procedures relating to the accumulation, storage, use, and sale of surface millings.

The APA made its initial inquiries on October 4, 2016, to Wesley Wahlgren, District 4 Engineer. At that time, the APA requested the District policy regarding the use of millings, whether the policy was a Department-wide policy or only a District policy, and whether millings are sold or provided to entities outside of the NDOR.

In an email response that same day, Mr. Wahlgren stated the following:

- 1) What is the District policy regarding the use of pavement millings? Please provide a copy. We don't have a policy on the use of millings but use them for many things and also let the contractor use them as Recycled Asphalt Pavement (RAP) in hot mix.
- 2) Is this a Department-wide policy or only for your District? See the answer to question 1.
- 3) Are the millings sold or provided to entities outside the Department of Roads? Yes, they can be sold to other governmental agencies for \$10 per ton or used by contractors as RAP.

When questioned further regarding how the millings are tracked or accounted for, the NDOR stated that the amount of millings sold is tracked; however, no millings had been sold during 2016. In that same October 5, 2016, email message, Mr. Wahlgren explained the following:

We don't track them unless they are sold. I spoke with Allen Horak, the District 4 Maintenance Operations Manager, and he said we haven't sold any millings this year. We draw out of the milling piles to fill erosion on shoulders, build pads, surface returns etc. We have been letting almost all of our millings go to the contractor on our construction projects to be recycled into the new asphalt the past 5 years or so. I had my maintenance forces scrounging to find millings to repair shoulder erosion south of Red Cloud on US-281 this summer and may keep some for these uses the next project we have in that area. Also another reason we don't keep to many millings anymore is if they sit for a year or two they turn into a big block that is hard to breakup.

That same day, the APA received a telephone call from Mr. Wahlgren indicating that his previous email was incorrect. The NDOR had milled a highway and had given the millings to the City of Ord. Mr. Wahlgren followed up the phone conversation with an email that contained the information below:

Per our telephone conversation, I do have to eat crow on this. I spoke to Don Stiger, the Superintendent in Ord, after I sent the last E Mail and he told me his supervisor responsible for the Ord area did give some millings that maintenance milled off of N-70 north of Ord to the City of Ord in exchange for getting water from a city hydrant for the milling machine. I'm not sure what the value of the water would be or even how much it took for the operation so I can't say if it justifies the value of the millings they were given in exchange for the water. Both Allen Horak and myself weren't aware of this until I spoke with Don.

During the telephone conversation, the NDOR was informed that the APA had received concerns that millings were given away at no cost not only to governmental entities, like the City of Ord, but also to several private individuals using State employees and vehicles to deliver the millings.

The following month, in November 2016, the APA provided the NDOR with the names of six private individuals, including the supervisor of the NDOR milling project, who had received millings at no cost. Mr. Wahlgren said that he would investigate this allegation and provide the APA with his findings. Two days later, Mr. Wahlgren contacted the APA, stating that he was having the NDOR Human Resources division investigate the matter.

A month later, in December 2016, the APA contacted the NDOR for an update on the investigation. The NDOR explained that the investigation was complete, and the agency had addressed the allegations accordingly.

In addition to the City of Ord, the APA verified independently that the NDOR provided millings at no cost to the following entities:

- *Ord Public Schools*
- *Loup Valley Rural Public Power District*
- *Country Partners Cooperative*

The APA confirmed with each entity that the millings had been received from the NDOR at no cost, and nothing of value was given to State employees in exchange for them. Each entity also said the millings were spread by its own staff, and that no State equipment was used other than to deliver them onsite.

Additionally, the APA confirmed independently that four private individuals received millings at no cost from the NDOR, as follows:

Individual #1:



(Source: Google Maps)

During a December 29, 2016, telephone call with the APA, Individual #1 confirmed that the millings were received at no cost, and nothing of value was given to State employees in exchange for them. Additionally, the individual verified that he spread the millings, and no State equipment was used other than to deliver them to the site pictured above.

Individual #2:



(Source: Google Maps)

During a December 28, 2016, telephone call with the APA, Individual #2 confirmed that the millings were received at no cost, and nothing of value was given to State employees in exchange for them. Additionally, the individual verified that he spread the millings, and no State equipment was used other than to deliver them to the site pictured above.

Individual #3:



(Source: Google Maps)

During a December 28, 2016, telephone call with the APA, Individual #3 confirmed that the millings were received at no cost, and nothing of value was given to State employees in exchange for them. Additionally, the individual verified that he spread the millings, and no State equipment was used other than to deliver them to the site pictured above. This individual claimed also that he helped to spread out the millings for the Ord School District.

Individual #4:



(Source: Valley County Assessor)

During a December 28, 2016, telephone call with the APA, Individual #4 confirmed that the millings were received at no cost, and nothing of value was given to State employees in exchange for them. Additionally, the individual verified that he spread the millings, and no State equipment was used other than to deliver them onsite.

The APA attempted to contact three other private individuals alleged to have received millings at no cost from the NDOR, but they did not respond to our inquiries.

NDOR employee:

An employee of the NDOR received millings at a garage that is separate from his home. This information was confirmed by a resident of Valley County. A photo of this property was unavailable.

The APA received an allegation that this same NDOR employee was responsible for approving the distribution of millings to the private individuals and received payments of beer in exchange for doing so. As noted previously on page 4, the APA provided all of this information to the NDOR, which led to an internal investigation by that agency. As of December 27, 2016, the employee in question was no longer working for the NDOR.

In addition to the resulting NDOR investigation referenced herein, the allegations against the employee responsible for approving the milling distributions pose certain potential legal concerns.

To start, Neb. Rev. Stat. § 81-1024 (Reissue 2014) prohibits the personal use of State vehicles, as follows:

No officer or employee of the State of Nebraska shall use any motor vehicle owned by the State of Nebraska for any personal use whatsoever. Any officer or employee who violates any of the provisions of this section shall be deemed guilty of a Class V misdemeanor, and in addition thereto the officer or employee shall be deemed guilty of official misconduct in office for palpable omission of duty, and upon conviction thereof the court shall have the power to add to the judgment that any officer or employee so convicted shall be removed from office or employment.

Moreover, if proven true, the allegations of using the NDOR trucks to deliver millings to the employee's own property and trading other loads of millings for beer may well constitute violations of the Nebraska Political Accountability and Disclosure Act (Act), which is set out at Neb. Rev. Stat. §§ 49-1401 to 49-14,141 (Reissue 2010, Cum. Supp. 2016).

Specifically, § 49-14,101.01(2) of the Act prohibits a public employee from using public assets for personal gain, as follows:

A public official or public employee shall not use or authorize the use of personnel, resources, property, or funds under his or her official care and control other than in accordance with prescribed constitutional, statutory, and regulatory procedures or use such items, other than compensation provided by law, for personal financial gain.

Per subsection (7) of that same statute, “[A]ny person violating this section shall be guilty of a Class III misdemeanor”

Section 49-1442 of the Act defines a “public employee” to mean “an employee of the state or a political subdivision thereof.”

Additionally, good internal controls and sound business practices require policies and procedures to ensure that State assets are adequately safeguarded and accounted for. Such procedures would include an official policy regarding the use, storage, and sale of road millings, as well as the proper supervision of NDOR staff in relation thereto. Without such policies, there is an increased risk for not only loss, theft, or misuse of State property but also non-compliance with State law.

We recommend the NDOR develop an official, State-wide policy regarding the use, storage, and sale of road millings. Any such millings should be valued in accordance with the NDOR policy and reported as an asset. We also recommend the NDOR review the supervision of its District employees to ensure proper supervision exists for both the use of work time and equipment. Because the present comment points to possible violations of State law, including the Nebraska Political Accountability and Disclosure Act, we are forwarding this information to both the Nebraska Attorney General and the Nebraska Accountability and Disclosure Commission for further review.

NDOR Response: NDOR has already commenced discussions about the potential for additional policies and procedures to manage NDOR's surface millings throughout its eight NDOR Districts. Because of the variations in Nebraska's surfaces, soils and weather conditions, it may not be possible to develop a uniform policy for all aspects of the use, storage and sale of road millings statewide. However, NDOR agrees that this is a valuable review, and to the extent uniform policies can be identified, it will proceed with implementation. NDOR will continue to ensure that State assets are accounted for and safeguarded to the best of our abilities. They will also continue to utilize the State Personnel Rules' as well as the NAPE/AFSME Labor Contract's disciplinary provisions to deal with State employees who misuse state resources.

Our audit procedures are designed primarily on a test basis and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the NDOR and its interaction with other State agencies and administrative departments gained during our work to make comments and suggestions that we hope will be useful to the NDOR.

This interim communication is intended solely for the information and use of the NDOR, its management, the Governor and the State Legislature, and others within these State agencies. It is not intended to be, and should not be, used by anyone other than the specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Sincerely,



Philip J. Olsen, CPA, CISA
Audit Manager

cc: Nebraska Attorney General
Nebraska Accountability and Disclosure Commission