

**OFFICE OF INSPECTOR GENERAL
CITY OF ALBUQUERQUE**



**Investigative Report
Case # 12-202**



OFFICE OF INSPECTOR GENERAL
CITY OF ALBUQUERQUE

February 17, 2012

Jill Holbert
Acting Director
Solid Waste Management Department
City of Albuquerque

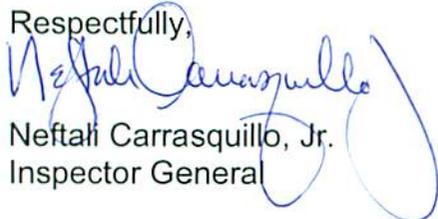
Re: OIG 12-202, Whistleblower Complaint against the Solid Waste Management Department

Dear Ms. Holbert,

On September 6, 2011, the Office of Inspector General (OIG) advised that we had met with an employee of the Solid Waste Management Department (SWMD). This employee requested confidentiality and was seeking the protection of the Whistleblower Policy regarding reporting alleged improper governmental action by SWMD as it related to the Eagle Rock Convenience Center (ERCC). The ERCC, allegedly, was knowingly and improperly accepting material containing asbestos to the health detriment of both employees and the public at large. The employee stated that he had made his supervisors aware of this situation, on numerous occasions, and was coming forward because he was afraid of management retaliation.

In our letter to you, the OIG advised that we were accepting the complaint. Enclosed please find a copy of the OIG's investigative report regarding this matter.

Respectfully,


Neftali Carrasquillo, Jr.
Inspector General

cc: Richard J. Berry, Mayor
City Council
Robert J. Perry, CAO
John Soladay, COO

Executive Summary

On August 29, 2011, the Office of Inspector General (OIG) met with an employee of the Solid Waste Management Department (SWMD). This employee requested confidentiality and sought the protection of the Whistleblower Policy. The employee alleged that the Eagle Rock Convenience Center (ERCC) was knowingly and improperly accepting material containing asbestos to the health detriment of both employees and the public at large. The employee stated that he had made his supervisors aware of this situation, on numerous occasions, and was coming forward because he was afraid of management retaliation.

On September 6, 2011, the OIG notified SWMD that the OIG had accepted this complaint under the Whistleblower Ordinance and the OIG had determined that this complaint should first be investigated by the complainant's department based on the procedures set forth in the Whistleblower Ordinance. The OIG therefore requested that SWMD conduct an investigation into this matter and a summary of the results be provided to the OIG within a prescribed period of time.

On September 27, 2011, the OIG received a response from SWMD. Based on an investigation they had conducted from September 15-20, 2011, SWMD concluded that while materials containing asbestos may be dumped by some customers, the ERCC was not knowingly accepting these materials.

The OIG carefully reviewed the results of the SWMD investigation and came to the following conclusions:

1. The dumping of asbestos containing materials had not been previously addressed through waste screening procedures, contingency planning, signage and employee training;
2. That ERCC stated that they do not accept large quantities of construction/demolition debris from private customers and that no construction/demolition debris is accepted from commercial customers, which is the most likely source of asbestos material. However, once this concern was brought to ERCC's attention, they have been focusing on this issue;
3. That ERCC was developing asbestos awareness and identification training for its employees scheduled for October 26-27, 2011;
4. That ERCC would update signs to address and reflect asbestos as an unacceptable material;
5. That SWMD waste screening procedures and contingency plans would be updated to include asbestos containing materials;
6. Procedures are now in place to limit the exposure of ERCC workers to asbestos,

and SWMD is working with a consultant to perform air sampling in order to evaluate air quality conditions inside the ERCC to determine whether concentrations exceed OSHA limits at the time of sampling, and;

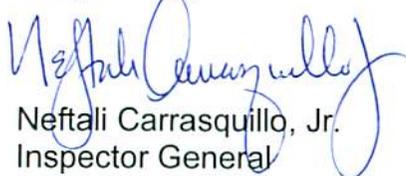
7. That SWMD acknowledged they were properly responding to an area of concern that had not been addressed previously.

The OIG formally requested that SWMD provide documented certification of the of the above conclusions, as well as, these procedures and corrective measures being implemented in the other facilities and convenience centers where this potential problem could present itself.

From January 10 - 12, 2012, the OIG conducted physical inspections of the ERCC, the Montessa Park Convenience Center and the Don Reservoir Convenience Center to assess whether or not the recommendations and mitigation efforts had been implemented. On January 27, 2012 the OIG met with Acting Director Jill Holbert to discuss the results of the inspections conducted.

The OIG is pleased with the cooperation and efforts made by SWMD, and specifically Ms. Holbert, in taking the necessary actions to mitigate, educate and ensure the safe operations of these Centers for the City, its employees and customers.

Respectfully,



Neftali Carrasquillo, Jr.
Inspector General

OIG Investigative Report

On September 6, 2011, the Office of Inspector General (OIG) advised Acting Director, Jill Holbert that we had met with an employee of the Solid Waste Management Department (SWMD). This employee requested confidentiality and was seeking the protection of the Whistleblower Policy regarding reporting alleged improper governmental action by SWMD as it related to the Eagle Rock Convenience Center (ERCC). The ERCC, allegedly, was knowingly and improperly accepting material containing asbestos to the health detriment of both employees and the public at large. The employee stated that he had made his supervisors aware of this situation, on numerous occasions, and was coming forward because he was afraid of management retaliation. The employee provided examples of conversations he had with management where he believed existed the potential for retaliation as a result of bringing his concerns to management.

The finding and intent of the Whistleblower Policy is as follows:

“The public health, safety and welfare are better protected by instituting a procedure for reporting improper governmental action, encouraging such reporting and protecting those who properly report such action from retaliation. Proper reporting will provide the opportunity to minimize any adverse impacts of improper governmental actions.”

As such, the OIG accepted this complaint under the Whistleblower Policy, Procedures for Reporting, Section 3-7-4 (C) *Complaints filed with the Inspector General*, and Section 3-7-4 (E) *Immediate Harm*. The OIG then made a determination that this complaint would first be investigated by the complainant’s department (SWMD) based on the procedures set forth in section (A) and, that a summary of the results of this investigation be provided to the OIG within 15 days of receipt of our formal request. The OIG advised SWMD that the complainant’s identity was to be kept confidential pursuant to Section 3-7-7 and of the following:

(1) that under Section 3-7-8 (A), retaliation from elected city officials and city employees was prohibited against an employee because the employee participated in an action protected under this article; and,

(2) that under Section 3-7-8 (B), it shall be a defense to any discipline that the disciplinary action was initiated in retaliation of the employee having filed an allowable complaint or participated in an action protected pursuant to this article.

On September 27, 2011, the OIG received a response from SWMD regarding the results of the investigation they conducted from September 15-20, 2011. SWMD concluded that while materials containing asbestos may be dumped by some

customers, the ERCC was not knowingly accepting these materials. The OIG carefully reviewed the results of the SWMD investigation and based on their findings came to the following conclusions:

1. ERCC acknowledged that the dumping of asbestos containing materials has not been previously addressed through waste screening procedures, contingency planning, signage and employee training;
2. ERCC stated that they do not accept large quantities of construction/demolition debris from private customers and that no construction/demolition debris is accepted from commercial customers, which is the most likely source of asbestos material. However, once the asbestos concern was brought to ERCC's attention, they have been focusing on this issue;
3. ERCC was developing mandatory training in asbestos awareness and identification for its employees which was scheduled for October 26-27, 2011;
4. ERCC would update signs to address and reflect asbestos as an unacceptable material;
5. SWMD waste screening procedures and contingency plans would be updated to include asbestos containing materials;
6. There were now procedures in place to limit the exposure of ERCC workers to asbestos, and SWMD was working with a consultant to perform air sampling in order to evaluate air quality conditions inside the ERCC to determine whether concentrations exceed OSHA limits at the time of sampling, and;
7. SWMD acknowledged they were properly responding to an area of concern that had not been addressed previously.

The OIG then formally requested that, 45 days from the receipt of our letter, SWMD provide documented certification of the following:

1. That the mandatory asbestos awareness and identification training has been provided and a list of those workers who have been provided this training;
2. That the signs addressing/reflecting asbestos as an unacceptable material have been updated;
3. That the waste screening procedures and contingency plans have been updated to include asbestos containing materials;
4. The results of the air sampling testing which would show whether or not the air quality conditions inside the ERCC exceed OSHA requirements, and;

5. The procedures are in place which limits the exposure of ERCC workers to asbestos.

In addition, the OIG requested that these procedures and corrective measures be implemented in the other facilities and convenience centers where this potential problem could also present itself.

I. On January 10, 2012 the OIG visited the ERCC to conduct an inspection. The ERCC did have one sign posted at the entrance stating that no asbestos containing material will be accepted. There were no signs inside the facility where the waste is disposed of.

The OIG spoke with the Disposal Division Superintendent (DDS) who stated that computer based training was completed in early December 2011 at the Plaza Del Sol training center. The DDS also indicated that the SWMD employees who attended the training were required to take a quiz at the end. The DDS admitted there were a few remaining employees who had not attended the training, due to one of the trainings being cancelled and also due to a couple of employees being on vacation. However, the DDS assured the OIG that the remaining employees would be rescheduled to complete the training in the next couple of weeks. The DDS pointed out that all SWMD employees, with the exception of drivers and landfill attendants who operate the big machinery, were to be trained.

The DDS explained the procedures in place to limit the exposure of asbestos to employees. He stated there are masks and safety glasses available for the employees to wear, but pointed out that they were not mandatory. The DDS stated that the material is wet down to help control dust and that during the summer months, the misters are also on. The DDS also pointed out the three large fans inside the ERCC that blow to the middle of the building where an exhaust fan is supposed to suck the air up and push it outside. The DDS admitted that this does not work as well as they would like it to, but confirmed an air sampling test was performed at the ERCC back in November 2011, and the results came back showing there was no asbestos.

The DDS was asked about the contingency plans, which the Compliance Officer stated had been updated and sent for review approximately three (3) weeks prior. The DDS stated he was in the process of reviewing them, but stated the contingency plan for asbestos is: if the individual dumping the asbestos containing material is still present at the facility, they are to take that material back themselves. If the individual has left, then the SWMD employees are to rope off the area where the asbestos has been identified and contact the contractor who will dispose of it.

II. On January 11, 2012 the OIG visited the Montessa Park Convenience Center (MPCC). The MPCC did have one sign posted at the entrance stating that no asbestos containing material will be accepted. There were no signs inside the facility where the waste is disposed of.

The OIG spoke with the pay station attendant, who stated she had not attended the training. The OIG also spoke with two other workers present who stated that they had attend the training and thought it was sufficient. A Supervisor, at MPCC provided the OIG with the Contingency Plan Training signature form and stated that the pay station attendant would be attending the training in the near future.

III. On January 11, 2012 the OIG visited the Don Reservoir Convenience Center (DRCC). The DRCC did have one sign posted directly below the pay station window stating that no asbestos containing material will be accepted. There were no additional signs around the facility where the waste is disposed of. The DRCC is an open air facility.

The OIG spoke with a Forman and a Supervisor, at DRCC, who stated they had both been trained and that there were only one or two employees that may still need to be trained. They both also confirmed that they knew who to call if they believe asbestos had been found and that they would rope off the area.

The OIG also spoke with the DRCC pay station attendant, who stated she had attended the training and thought it was good. She stated that she asks the customers if they have any materials that are not accepted. One worker stated he had not yet taken the computer based training, but stated he had taken the screening procedures class; and another worker confirmed he had taken the computer based training and also thought that it was sufficient. Both workers stated that they screen what people are dumping and try to catch anything that is not accepted.

IV. On November 19, 2011 CDM Smith conducted air quality monitoring at the ERCC, which consisted of a collection of air samples and analyses to determine the presence of asbestos at the ERCC. On January 10, 2012, a copy of the Air Quality Monitoring Report was provided to the SWMD DDS. The analytical results of the samples indicate concentrations of airborne asbestos fibers were below the OSHA regulatory standards and ACGIH recommended guidelines for the sampling period.

The report by CDM Smith also makes the recommendation that the ERCC continue to use the exhaust fans at the facility to maximize the removal of particulates in the building interior. The report also recommends the continuous use of the misting system to minimize airborne dust particles.

V. On January 12, 2012 the DDS provided the OIG with a copy of the Air Quality Monitoring Report, as well as copies of the Asbestos Awareness Training sign in sheet, a list of the individuals who attended the training and their exam scores. The DDS mentioned that due to the holidays and scheduling conflicts there were approximately six (6) employees that still needed to be scheduled, but the DDS planned to have these remaining employees scheduled within the next few days.

VI. On February 10, 2012 the DDS provided the OIG with a copy of the Emergency Procedures Contingency Plan for the ERCC. The updated Contingency Plan contains Regulated Asbestos Waste Screening Procedures.

The DDS also sent a list of the employees that work within the Convenience Centers and the Asbestos Awareness Training Final Grades (AATFG), which was sent over from the City of Albuquerque/Public Service University (COA/PSU) that conducted the training. The DDS stated there is one employee who had not completed the course until February 8, which was after the AATFG form was sent to the DDS. However, the DDS stated he was informed that this employee had passed the exam and that an updated form with his completion information would be sent.

The DDS also mentioned that one of the things he discussed with the COA/PSU was the training of new employees, and he believes that a couple of computers will be set up at the Disposal Administration office, so as to deploy the internet based training on site and have some of the administrative staff oversee the training.