



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

Melissa Santistevan, CFE, CIG, CIGE, CIGI
Inspector General

P.O. Box 1293, Suite 5025
Albuquerque, New Mexico 87103
Telephone: (505) 768-3150
Fax: (505) 768-3158

Investigative Informative Case Synopsis

FILE NO: 24-0122-C

SUBJECT MATTER: Allegation that certain salaries are not being allocated amongst federal and non-federal funds

STATUS: Draft

INVESTIGATOR: M. Santistevan

MELISSA SANTISTEVAN, CIG, CIGE, CIGI, CFE
INSPECTOR GENERAL
OFFICE OF INSPECTOR GENERAL

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VICTOR GRIEGO, CPA
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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) operates following the Association of Inspectors General (AIG) standards, as outlined in City Ordinance 2-17-2. The overarching goals include conducting investigations impartially, preventing fraud and abuse, ensuring independence, and enhancing the City of Albuquerque's (City) accountability.

As defined in the Inspector General Ordinance §2-17-3, fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

On April 30, 2024, the OIG received a complaint alleging that the Environmental Health Department (EHD) is allocating 100% of the Associate Director's (AD1) payroll to the Environmental Protection Agency (EPA) Title V federal fund, meaning AD1's full salary is being charged to the Title V fund. AD1 oversees two divisions, one federal and the other non-federal.

The OIG determined that it was appropriate for the OIG to conduct a fact-finding investigation for elements of fraud, waste, or abuse through non-compliance with grant requirements.

The purpose of the investigation was to substantiate or not substantiate waste caused by non-compliance with Title V requirements.

The identification of deficiencies and recommendations for improvement are intended to enhance accountability and mitigate fraud, waste, or abuse within the City's operations.

Findings:

- AD1's salary is not allocated based on their oversight responsibilities.
- AD1 is paid solely from the EPA Title V Fund 242/5615000 which could result in an overstatement of expenditures charged to the federal funds.

Recommendations:

- Review job descriptions and fund allocation to ensure each is aligned with job responsibilities.
- Have appropriate personnel review salaries to be allocated to ensure they are based on the percentage of time spent on each program.
- Perform a historical payroll analysis to determine if it is necessary to recoup or reallocate costs between the general fund and federal programs.
- The City should assign appropriate personnel to review the allocations to ensure compliance with the federal funding requirements.

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ABBREVIATIONS

A1: Administrator
AD1: Associate Director
AIG: Association of Inspectors General
CAA: Clean Air Act
City: City of Albuquerque
D1: Director
DD1: Former Deputy Director
EHD: Environmental Health Department
EPA: Environmental Protection Agency
OIG: Office of Inspector General

INTRODUCTION

The Office of Inspector General's (OIG) mission is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following the Association of Inspectors General (AIG) Standards.

Complaint

The complaint alleges that the Environmental Health Department (EHD) allocates 100% of the Associate Director's (AD1) payroll to federal fund 242 Environmental Protection Agency (EPA) Title V, meaning AD1's full salary is being charged to the Title V fund. AD1 oversees two divisions, one federal and the other non-federal.

Background

EHD encompasses programs and divisions focusing on public health and environmental threat prevention such as infectious diseases, climate change, environmental contamination, and air pollution.

EHD manages a General Fund (Fund 110), the Air Quality Fund (Fund 242), and the Operating Grants fund (Fund 265).

The Air Quality Fund (242) consists of two programs, operating permits and vehicle pollution. The operating permits program monitors and administers permitting or air quality while the vehicle

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pollution program monitors and administers motor vehicle inspections and maintenance of oxygenated fuels. Fund 242 is further delineated by activity. These activities include operating permits, fugitive dust, EPA Title V, and vehicle pollution.

The provisions under Section 502(b)(3) in Title V of the Clean Air Act (CAA) require authorized agencies to enact under State or local laws, requirements that owners or operators subject to the requirement to obtain a permit must pay an "annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of [Title V of the CAA]." Section 502(b)(3)(C)(iii) of the CAA states that these fees collected by the permitting authority " shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the [Title V] permit program." The EPA implemented these two CAA provisions by promulgating regulations under Title 40 of the Code of Federal Regulations (40 CFR) Part 70. Specifically, the Fee Requirement provisions at 40 CFR Section 70.9(a), "require that owners or operators of part 70 sources pay annual fees ... that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The Fee Schedule Adequacy requirements at 40 CFR § 70.9(b)(2) state, "The Administrator will presume that the fee schedule meets the requirements of paragraph (b)(1) of this section if it would result in the collection and retention of an amount of not less than \$25 per year [as adjusted pursuant to the criteria set forth in paragraph (b)(2)(iv) of this section] times the total tons of the actual emissions of each regulated pollutant (for presumptive fee calculation) emitted from part 70 sources and any GHG cost adjustment required under paragraph (b)(2)(v) of this section."

As the permitting authority for the Title V program in the City and Bernalillo County, EHD must ensure that it collects the required fee revenues and that the fees are used solely to cover the costs of meeting the various functions of the Title V operating permit program.

In 2021, the EPA audited the Title V program and identified deficiencies. The EPA determined that EHD did not have a sufficient system for allocating the appropriate percentage of payroll to the appropriate program. This deficiency noted in the previous audit is relevant to this investigation.

On May 25, 2023, the United States EPA issued a memorandum on Fee evaluation and Oversight guidance for 40 CFR Part 70 related to Air Quality Programs as part of its response to the EPA OIG's recommendation to "update the EPA's guidance documents to require regions to establish time frames for permitting authorities to complete corrective actions are not completed" and "update the Clean Air Act Title V guidance document to establish criteria for when regions must conduct Title V fee evaluations and require a minimum standard of review for fee evaluations".

The guidance states "As part of its ongoing oversight of part 70 programs, EPA may require "periodic updates" of the initial accounting" portion of the "fee demonstration" to show whether fee revenue required by part 70 is used solely to cover costs of the permit program. EPA may also require a "detailed accounting" to ensure that the fee schedule is adequate to cover costs when a permitting authority changes its fee schedule to collect less than the "presumptive minimum" or if EPA determines, based on comments rebutting a presumption of fee sufficiency or on EPA's own initiative, that there were questions regarding whether the fee schedule is sufficient to cover the permit costs.

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SCOPE AND METHODOLOGY

Scope:

Organizational Charts and payroll allocations for EHD from April 2024 to the present.

The methodology consisted of:

Obtain and review organizational charts
Review payroll allocations
Review EPA's Title V Guidance
Review the 2021 EPA Title V audit
Request and review the EPA audit conducted in July 2024
Obtain and review emails
Conduct inquiries

This report was developed based on the OIG's review of relevant documentation and records available during the investigation.

INVESTIGATION

Allegations:

The complaint alleges that the Environmental Health Department (EHD) allocates 100% of the Associate Director's (AD1) payroll to federal fund 242 EPA Title V meaning AD1's full salary is being charged to the Title V fund. AD1 oversees two divisions, one federal and the other non-federal.

Authority:

40 CFR Part 70 EPA Fee Evaluation and Oversight Guidance

2021 EPA Title V Audit and Findings

Evidence:

2021 EPA Title V Audit and Findings

40 CFR Part 70 EPA Fee Evaluation and Oversight Guidance

Organizational charts

Payroll Allocations

Emails

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Analysis:

2021 EPA Title V Audit and Findings

The OIG reviewed the December 2021 EPA Title V Audit and findings noting the EPA recommended the EHD develop or adopt a more robust accounting system for the division of Title V labor, e.g., specific work codes for personnel to use when working on Title V activities permitting for a more precise account of actual time dedicated solely to Title V permit activities.

EPA recommends that EHD address Title V fees appropriately to ensure adequate funds are collected to cover the cost of the agency's Title V program in its entirety including expenses for personnel work time dedicated to Title V-related tasks and any additional expenditures specific to operating the Title V program. The EPA also requested a corrective action plan to EPA that includes a timeline, necessary steps that will be taken to ensure adequate Title V fees, and a demonstration that those fees will adequately support the program.

The federal regulations at 40 CFR 70.9 for Title V programs require state/local air quality agencies to account for Title V resources in a manner that clearly segregates them from other air quality programs and that only Title V fee revenues are used for Title V program costs. EPA was able to verify that the EHD has procedures in place for separating Title V revenues from other air program fees. However, EHD should ensure that its Title V fee revenues are explicitly accounted for and used only for Title V program-related costs for personnel assigned to perform Title V-related work in EHD's program and expenses incurred directly by the program.

The EPA informed EHD of the deficiencies and requested responses for corrective action. The OIG reviewed emails from April 2024 indicating that the EPA would be conducting another audit and that the previous findings needed to be addressed.

The OIG reviewed a memorandum, from DD1, dated April 4, 2024, acknowledging that the previous responses failed to address the allocation of payroll expenses between programs. DD1's memorandum to D1 provided the following recommendations to address the findings from the 2021 EPA audit:

“Have each manager identify and make recommendations regarding staff who work within and support the Title V program and determine the appropriate percentage of their salary to be allocated to the program based on time spent on the program. For example, permit writer 100% Title V, permitting manager 50% Title V/50% Operating Permits.

- Assign the correct funding source for staff. ie. Title V and Operating Permits
- Determine whether expenditures can be corrected/aligned with the proper program through a Journal Entry for FY 2022, 2023, and 2024.
- Apply recommended items 1-3 above to FY2025 and future budget cycles.
- Consult with the EHD Fiscal Manager
- Consult with City Accounting”

The OIG was not provided evidence of corrective action for the audit findings from 2021. According to a representative, the EPA had not received a corrective action plan from the City for the 2021 audit findings.

40 CFR Part 70 (Title V) EPA Fee Evaluation and Oversight Guidance

The OIG considered the following excerpts from the guidance.

- Any fee required by part 70 must “be used solely for permit program costs”- in other words, required permit fees may not be diverted for non-part 70 purposes. Nothing in part 70 restricts air agencies from collecting additional fees beyond the minimum amount needed to cover part 70 program cost; however, all fees (including surplus fees collected) must be used for part 70 purposes.
- Each permitting authority will have to determine its own permitting effort and what activities are directly and indirectly concerned with operating permits.
- As part of its ongoing oversight of part 70 programs, EPA may require “periodic updates” of the “initial accounting” portion of the “fee demonstration” to show whether fee revenue required by part 70 is used solely to cover the costs of the permit program.

Time and effort allocations should be conducted and documented as the basis for payroll allocation of individuals providing services for federal and non-federal programs. Allocations are necessary to ensure the capture of all expenditures of each program to ensure reliable reporting and compliance with federal funding requirements.

Although payroll allocation is not specifically mentioned in these excerpts, the OIG acknowledges that ascertaining accurate program costs would be impossible without the proper allocation of salaries for those employees spending time on this program.

Organizational charts

EHD provided three organizational charts: April 1, 2024, July 27, 2024, and November 8, 2024. An analysis of these organizational charts revealed several reorganizations due to staff resignations, or early retirements since April 2024.

The EHD organizational chart effective April 1, 2024, reflects that AD1 was an Associate Director with oversight responsibility for fourteen (14) positions assigned to the Grants Program, Operating Permits Program, Fugitive Dust Program, EPA Title V Program, and Environmental Services. Only one (1) employee salary out of the fourteen (14) employees assigned to AD1 was allocated to the EPA Title V program.

The OIG noted that AD1 was promoted from an Associate Director to a Deputy Director on July 27, 2024, resulting in a new department organizational chart. The new organizational chart reflected that AD1 had oversight responsibility for forty-six (46) positions crossing multiple programs.

The November 8, 2024, updated organizational chart revealed that AD1 has oversight responsibility for forty-eight (48) positions in various programs.

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The OIG noted that AD1’s salary allocation did not appear representative of program position assignments. A misrepresentation of salary expenditures for federal funds may result in inaccurate program costs and the inability to determine if the program is self-sustaining as required in the grant guidance.

Payroll Allocations

The OIG reviewed a report of payroll allocations by department and position for EHD for Fiscal Years 2021-2023. The OIG noted five positions were allocated to two or more programs as follows:

Position/Title	Account	%	Account	%	Account	%
10001885/Fiscal Manager	110/5634000	25%	242/5612000	25%	265/5680000	50%
10002999/Deputy Director	242/5610000	22%	242/5612000	22%	242/5615000 265/5680000	33%
10000002/Unknown	110/5634000	20%	242/5610000	20%	?/4910000	60%
20000124/Sr. Env Health Scientist	242/5612000	50%	265/5680000	50%		
10000737/Asst City Attorney	110/3416000	15%	242/5610000	85%		

The OIG also reviewed a report of payroll allocations by department and position for EHD for Fiscal Years 2024-2025. The OIG noted four positions were allocated to two or more programs and that one (1) position was solely allocated to the EPA Title V program despite having oversight responsibility for multiple divisions.

Position/Title	Account	%	Account	%	Account	%
10001885/Fiscal Manager	110/5634000	25%	242/5612000	25%	265/5680000	50%
10002999/Deputy Director	242/5610000	22%	242/5612000	22%	242/5615000 265/5680000	33%
10010236/Associate Director	242/5615000	100%				
20000124/Sr. Env Health Scientist	242/5612000	50%	265/5680000	50%		
10000737/Asst City Attorney	110/3416000	15%	242/5610000	85%		

The OIG noted that AD1’s salary was allocated solely to the EPA Title V Program and not allocated between federal and non-federal programs although AD1 oversees employees whose payroll is allocated to multiple federal and non-federal funds.

Emails

The OIG reviewed emails between April 2024 and June 2024 expressing concerns over AD1 assigning work related to the human feces/excrement project (110/5626000) to a staff assigned to fund 242/5610000 whose activities are restricted to the Air Quality program.

The OIG also reviewed an email from D1 regarding the recommendations made by DD1 in April 2024. The email outlined that the full-time employees (FTEs) are to be moved to more accurately

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reflect staff responsibilities effective July 1, 2024, and return FTEs to their original fund. AD1 will work with managers to determine if suggested labor percentages are properly apportioned between air quality programs, and future discussions will decide the implementation of percentages in Kronos (the City's official timekeeping software).

These emails reflect that EHD began to address the December 2021 audit findings in June 2024, meaning that the audit concerns remained in effect for more than two years.

Conclusion:

The evidence obtained during the investigation supports the allegation that certain salaries are not allocated between federal and non-federal funds.

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FINDING AND RECOMMENDATION

Allegation:

The complaint alleges that the Environmental Health Department (EHD) allocates 100% of the Associate Director's (AD1) payroll to federal fund 242 EPA Title V, meaning AD1's full salary is being charged to the Title V fund. AD1 oversees both the federal and non-federal divisions.

Finding:

Condition: AD1's salary is not allocated based on their oversight responsibilities. AD1 is paid solely from the EPA Title V Fund 242/5615000 which could result in an overstatement of expenditures charged to the federal funds.

Criteria: EPA Clean Air Act Title V

Cause: Inattention due to changes in management.

Effect: Noncompliance with EPA grant requirements. Improper allocation may result in an overstatement or understatement of expenditures charged to the federal funds. This could result in a portion of salary expense being disallowed and having to be reallocated to the general fund resulting in waste.

Recommendations: EHD should review job descriptions and fund allocation to ensure each is aligned with job responsibilities.

EHD should review positions that perform functions of multiple programs to ensure their salary is allocated based on the appropriate percentage of time spent on each program.

EHD should perform a historical payroll analysis to determine if it is necessary to recoup or reallocate costs between the general fund and federal programs.

The City should assign appropriate personnel to review the allocations to ensure compliance with the federal funding.

Management's Response:

The Environmental Health Department disputes that it allocates 100% of the Associate Director's salary to Fund 242. EHD has a process in place to allocate salaries between Fund 242 and Fund 110.

EHD hired an associate director on 04/06/2024. At that time, funding for the position came from Fund 242/5615000, as the intent was to focus on tasks related to the air quality program. As department needs evolved, the associate director's duties were expanded to include those that were based in Fund 110, specifically the Environmental Services Department. On 07/27/2024, the associate director was promoted to deputy director. No replacement associate director was hired until 02/22/2025.

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Management early on recognized the need to identify and quantify the time spent by personnel on tasks that originated in different funds. The concern affected not only the associate director but also additional personnel within EHD's Title 5 program. EHD's fiscal manager was asked to identify an efficient manner to catalog time, resulting in appropriate fund utilization. A key element in proper allocation is for staff to track their time by program. This includes all staff, from air quality permit writers and administrative personnel to managers and deputy directors. A meeting between EHD's fiscal manager and air quality managers took place on Monday, November 18, 2024, to discuss time tracking. Both managers successfully rolled out Excel worksheets shortly thereafter to allow their staff to track their time. EHD was able to gather two months' worth of time-tracking data, which was used to allocate pay percentages based on actual hours worked.

On February 8, 2025, employees' time was charged to the appropriate fund according to these percentage allocations. This breakdown will be re-evaluated, and percentages will be updated quarterly. The new associate director began tracking his time after starting on 2/22/2025.

After discussing this issue with EHD's managers, it became clear that while this approach achieves the desired outcome, it is not the most efficient method. EHD is exploring alternative options, such as the upcoming Tyler Tech permitting software and other applications, to track time more efficiently than Excel. As a result, there has been a delay in rolling out time tracking to administrative staff and higher-level management positions. EHD hopes to adjust this practice prior to the start of FY26.

To the extent allocations have not yet been made for any personnel who performed work during FY 25, EHD will make that allocation at the end of the fiscal year.