



OFFICE OF INSPECTOR GENERAL
City of Chicago



REPORT OF THE OFFICE OF INSPECTOR GENERAL:

***ADVISORY CONCERNING THE DISPOSAL OF
NON-HAZARDOUS WASTE FROM CITY
INFRASTRUCTURE PROJECTS***

APRIL 2015

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OFFICE OF INSPECTOR GENERAL
City of Chicago

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VIA ELECTRONIC MAIL

April 22, 2015

Lisa Schrader
Chief of Staff
Mayor's Office
121 N. LaSalle Street
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Dear Chief of Staff Schrader:

A recently concluded investigation by the City of Chicago Office of Inspector General (OIG) identified inadequacies in the monitoring and enforcement of waste disposal during City construction projects.

The investigation revealed that in September 2012 two different companies violated the Municipal Code of Chicago (MCC) and their City contracts by disposing of milled asphalt from City projects at improper dump locations. Additionally, in one of the situations we reviewed, the contract project manager was completely unaware that such dumping is regulated by law and contract. Although multiple City departments were aware of the improper dumping, no department took action to stop it or to ensure that future disposal would comport with legal and contract requirements. Our inquiry revealed that no City department takes primary ownership and responsibility for enforcing the law or the contract provisions regarding the disposal of non-hazardous waste.

I. BACKGROUND

As required in MCC § 11-4-1930, reprocessible construction or demolition materials must be disposed of or reprocessed at a properly zoned and permitted facility. Such materials include milled asphalt, which is generated when streets are torn up for construction or demolition projects. Contractors working on City construction projects are further obligated to comply with MCC § 11-4-1930 through the "Contractor's Affidavit Regarding the Removal of all Waste Materials and Identification of All Legal Dump Sites." The Contractor's Affidavit contractually requires them to specify the City-approved sites where they plan to dump project waste materials and obligates them to dump at those specified sites. In the event that contractors cannot or choose not to dump at the contractually specified locations, they must notify the user department and receive express approval to dump at an alternate, City-zoned and permitted facility. The cost for dumping at specified City-approved locations is built into the City's contracts.

City contracting departments are required to ensure that their project contractors follow the law and comply with their City contracts. The Chicago Department of Public Health (CDPH) is responsible for enforcing compliance with the City's environmental and health protection ordinances, including MCC § 11-4-1930.

II. ANALYSIS

In September 2012, a CDPH environmental inspector witnessed two incidents involving the improper dumping of milled asphalt removed from City projects. OIG's ensuing inquiry found evidence that the dumping of milled asphalt at locations not permitted or zoned to receive it is standard operating procedure.

In the first incident, a contractor working on a Chicago Department of Transportation (CDOT) street resurfacing project disposed of milled asphalt at a former dump site in remediation.¹ The site was not a contract-specified dump site and was not permitted or zoned to receive milled asphalt. In the second incident, a Department of Water Management (DWM) subcontractor disposed of milled asphalt from a City project onto the subcontractor's own private property—allegedly using the asphalt to bring a vacant lot to grade level. The site was not listed in the contract, nor was it zoned or permitted as required by MCC § 11-4-1930. The subcontractor told a CDPH inspector that DWM was aware the materials were being dumped there.²

If, in fact, a DWM project manager approved of the dumping location, such approval was improper because the site was neither properly zoned nor permitted to receive the materials. Through such approval, DWM would have been acquiescing in a contract variance that squarely violated the law. The project manager was an employee of a joint venture group the City hired to manage the DWM construction project. The City's contract with the project manager's employer required that, in the course of managing the DWM construction project, the joint venture group would ensure that its subcontractors complied with all legal obligations, including compliance with MCC § 11-4-1930.

According to the DWM contract project manager, he did not collect dump tickets for milled asphalt or track where milled asphalt was dumped because it was his understanding that dump tickets are not required for payment from the City for non-hazardous material. In particular, the DWM manager was unaware of the City ordinance and contract provisions governing disposal of non-hazardous materials such as milled asphalt, and believed the dumping location was left to the discretion of the contractor. The project manager opined that there was no harm to the City when contractors dump milled asphalt on private property because the contractors had already been paid to remove the material and they in fact did so. OIG also found that, although the project manager did collect dump tickets for hazardous materials, he did not use them to track whether the hazardous waste was dumped at a permitted and approved facility. The project manager reported that he collected the hazardous waste tickets solely for payment purposes, because, unlike the disposal of non-hazardous material, hazardous material removal is a distinct contract line item.

¹ The property was being remediated via an Illinois Environmental Protection Agency-approved remediation plan. However, it was neither zoned nor otherwise permitted for the dumping of the milled asphalt from the City projects.

² The CDPH environmental inspector informed OIG that the property appeared to already be at grade level.

In all of the foregoing respects, the DWM contract project manager's assumptions were not merely erroneous, but manifested ignorance of the relevant contract provisions and the environmental regulatory rubric behind them. First, the City specifically bargains, contracts, and incurs a premium that is built into the contract specifically for dumping at properly zoned and permitted non-hazardous waste facilities. The cost per load to dump non-hazardous materials at facilities in 2012 was between \$110 per load and \$160 per load, and that price is included in the City's contract as part of a line item that includes the cost of grinding, hauling, and disposing of the asphalt. Dumping milled asphalt from City projects was reported to OIG as costing more at a properly permitted and zoned site, in part because the City pays a premium for a contract-specified service, which project managers working for user departments and general contractors do not ensure the City receives.

Finally, according to a CDPH inspector, dumping non-hazardous construction waste at improper locations is a common practice. Contractors routinely dump non-hazardous waste at non-licensed facilities where they are not charged disposal fees and then "pocket" the difference on the City's higher contract price. As the contract does not separately identify disposal costs for non-hazardous dumping, it is impossible to determine how much of a financial loss the City suffered in the instances noted above, or generally.

III. CONCLUSIONS

City Ordinance deems proper disposal of hazardous and non-hazardous construction and demolition debris important and the City reinforces this importance through special provisions in its contracts. However, current contract management protocols and culture appear to foster non-compliance, to the financial and environmental regulatory detriment of the City, its residents, and its taxpayers. Inadequate tracking and controls also create an opportunity for waste haulers to pocket money specifically intended to pay for waste disposal at contractually specified permitted facilities. Our inquiry also suggests that the culture of non-compliance may extend to the disposal of hazardous waste, which program managers may track for payment purposes but not necessarily for regulatory and contract compliance. Finally, it appears that no City department—including both user and regulatory or legal departments—takes primary responsibility for enforcing the law or the contracts, in particular, in relation to the dumping of non-hazardous waste generated from infrastructure projects. The result is a significant risk of illegal dumping and other improper disposal that could endanger health and safety while leaving the City paying for services it does not receive.

IV. SUGGESTIONS

We suggest that the City review contract and regulatory enforcement related to the transfer and dumping of waste from infrastructure projects and consider,

- establishing coordination between the contracting department, any entity hired to manage a contract, and CDPH to understand the terms of contracts being managed and the significance of those terms, including the impact of any relevant laws on the contracted activities;
- pursuing cost recovery when contractors dispose of non-hazardous materials at locations not specified in the Contractor's Affidavit;

- processing changes to the monitoring of non-hazardous and hazardous materials disposal, including collecting and tracking dump tickets; and
- requiring that CDPH issue citations when it determines that there have been violations of municipal ordinance, even when the incident has been reported to OIG.

OIG invites the City to respond in writing before May 21, 2015. Any such response will be made public together with this OIG advisory.

Respectfully,



Joseph M. Ferguson
Inspector General
City of Chicago

CC: Dr. Julie Morita, Acting Commissioner, Department of Public Health
Steve Patton, Corporation Counsel, Department of Law
Thomas H. Powers, Commissioner, Department of Water Management
Rebekah Scheinfeld, Commissioner, Department of Transportation

CITY OF CHICAGO OFFICE OF THE INSPECTOR GENERAL

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MISSION

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

- administrative and criminal investigations;
- audits of City programs and operations; and
- reviews of City programs, operations, and policies.

From these activities, OIG issues reports of findings, disciplinary, and other recommendations to assure that City officials, employees, and vendors are held accountable for the provision of efficient, cost-effective government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

AUTHORITY

The authority to produce reports and recommendations on ways to improve City operations is established in the City of Chicago Municipal Code § 2-56-030(c), which confers upon the Inspector General the following power and duty:

To promote economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the city government by reviewing programs, identifying any inefficiencies, waste and potential for misconduct therein, and recommending to the mayor and the city council policies and methods for the elimination of inefficiencies and waste, and the prevention of misconduct.