

December 15, 2010

Department of the Auditor General
The Bureau of Special Performance
229 Finance Building
Harrisburg, Pennsylvania 17120

Dear Sir/Madam:

The purpose of this letter is to request a performance audit of two agencies for what appears to be flagrant dereliction of their statutory duties.

The first requested performance audit is for the Pennsylvania Department of State for failing to fully investigate and disclose the findings of an inquiry into the unauthorized practice of geology by Andrew Voros and the Pennsylvania Department of Environmental Protection's (PADEP) complicity in Mr. Voros' actions. *See* File No. 08-47-03663 (attached). The Department has had an open investigation into the matter for more than two years, but refuses to disclose its findings, citing financial constraints as hindering its ability to hire an independent expert to complete the inquiry. This failure to investigate the unauthorized practice of geology and subsequent reliance by PADEP upon reports stemming from such analysis jeopardizes the environment, as well as public health and safety. Furthermore, the Department of State's failure to fully investigate a public complaint is in violation of its statutory responsibilities, as it is tasked with performing inquiries and referring violations of applicable law to the relevant professional licensure board—here, the State Board of Engineers, Land Surveyors, and Geologists. 4 PA. CONS. STAT. § 1517.

This letter also seeks a special performance audit of PADEP for its unquestioning acceptance of the reports authored by Mr. Voros and further reliance upon the findings contained therein without verification or certification of the geological analysis upon which the reports are predicated. Pennsylvania law requires all documents with geological analysis used in assessing whether to issue a permit possess a stamp and certification by a licensed professional geologist. *See* 25 PA. CONS. STAT. § 250. PADEP's espousal of the success of the Bark Camp project based on Mr. Voros' reports served as the basis for further development and mine reclamation permits and may prove detrimental to the public and environment.

Legal Issues

The allegations in the original complaint against PADEP stem from Chapter 37 of the Pennsylvania Code regarding the requirements to practice engineering, land surveying or

geology. The regulations mandate all such professionals be licensed and registered under Pennsylvania laws in order to practice within the state. 49 PA. CODE § 37.36. Only Pennsylvania-licensed geologists may perform geological and hydrogeological interpretations. 25 PA. CONS. STAT. § 250. Furthermore, Pennsylvania law requires documents containing geological analysis and interpretation be stamped and certified by a Pennsylvania-licensed geologist. 63 PA. CONS. STAT. § 148, *et seq.* In particular, Pennsylvania-licensed geologists must stamp and certify plans for the use of dredge and coal ash in mine reclamation. 25 PA. CODE § 87.65(b). Failure to comply with the relevant licensure and registration laws will subject the practicing offender to disciplinary actions by the State Board for Professional Engineers, Land Surveyors, and Geologists and civil penalties, generally upon referral by the Professional Compliance Office of the Department of State. 49 PA. CODE § 43.b13a. However, due to inaction by the Department, no disciplinary or remedial actions have been taken regarding the alleged unauthorized practice of geology, and PADEP continues to rely upon the findings of the unauthorized practice to sanction similar projects to that of Bark Camp.

Factual Background

In 1995, the New York/New Jersey Clean Ocean and Shore Trust (COAST) and the PADEP began collaborating on the Bark Camp Demonstration Project in Clearfield County to test the veracity of using coal ash and lime mix with dredged sludge to fill abandoned coal mines and prevent waterway contamination. Andrew Voros, Executive Director of COAST, is the principal author of the reports articulating COAST's findings of the work done at Bark Camp, including the initial 2004 report (*Dredged Materials in Abandoned Mine Reclamation, The Bark Camp Demonstration Project*) and the 2006 final revised version (*The Use of Dredged Materials in Abandoned Mine Reclamation*), which PADEP subsequently posted on its website. Mr. Voros has a Bachelor of Arts in psychology and a Bachelor of Science in biology from Rutgers University, but does not have the proper education, experience, or license to practice geology in Pennsylvania or any other state. Both reports, which contain geological and hydrogeological analysis and interpretation, fail to provide a stamp and certification from a licensed geologist as required by 63 PA. CONS. STAT. § 148, *et seq.* Despite the lack of certification by a professional geologist, PADEP frequently espoused the Bank Camp project as a successful use of coal ash and dredged materials, and maintains that such a project serves as solution to the myriad mine reclamation issues with which Pennsylvania grapples. Furthermore, PADEP relied upon findings from the project in consideration and approval of subsequent similar projects.

Since the release of the reports, PADEP consistently touted the report and Mr. Voros' analysis. In 2006, the Army for a Clean Environment, a grassroots environmental group, hired Robert A. Gadinski, a licensed geologist and retired PADEP hydrologist currently engaged in private consulting, to review the 2004 report in relation to a proceeding before the Environmental Hearing Board (EHB) regarding a permit for a project similar to that of Bark Camp. *Army for a Clean Env'tl. v. Dep't of Env'tl. Prot.*, EHB Docket No. 2005-036-k (Sept. 22, 2006). Mr. Gadinski rejected many findings contained in Mr. Voros' analysis in his own expert report. Mr. Gadinski further alleges that Mr. Voros manipulated the 2006 Bark Camp report after the submission of the final report and

before a hearing before the EHB in April 2007 to downplay the criticisms Mr. Gadinski levied in his independent assessment of the project regarding water contamination.

Furthermore, the Citizens Advisory Council of PADEP supported the development of the Hazelton Creek site based upon the Bark Camp reports, as well on another “expert report” produced for litigation by Mr. Voros, for which Mr. Gadinski also provided an expert report critical of the findings and policies espoused by Mr. Voros. *Citizen Advocates United to Safeguard the Env’t. v. Commonwealth of Pennsylvania*, EHB Docket No. 2006-005-L (Consolidated with 2005-329-L) Trial Tr. 2678-2684 (Nov. 2, 2007). Indeed, the Council explicitly cited the Bark Camp project as a solution to Pennsylvania’s mine reclamation challenges. *See*, Citizens Advisory Council, *Hazleton/Wilkes Barre: Report of the 2005 Regional Field Trip*, Jan. 17, 2006, <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-44542/2005%20Hazelton%20Wilkes%20Barre%20Regional%20Report.pdf>. The attorney for Hazelton Creek Properties, co-permittees named to the suit along with the Commonwealth of Pennsylvania, PADEP and the Hazelton Redevelopment Authority, called Mr. Voros to the stand, who testified and held himself out as an expert while speaking about the Bark Camp project. *Id.* Throughout the permittees’ case, Bark Camp was constantly referenced as a successful use of coal ash and dredge materials in mine reclamation, based upon the reports by Mr. Voros, as a means to justify the proposed action at Hazelton Creek. However, PADEP and the rest of the permittees were aware of the contentiousness of Mr. Voros’ testimony regarding the Bark Camp reports based on appellant’s multiple objections to Mr. Voros’ testimony as an expert. *Id.* at 2685-2687.

On April 3, 2008, Mr. Gadinski submitted the above-referenced complaint (file number 08-47-03663) regarding Mr. Voros’ authorized practice of geology and PADEP’s reliance upon his analysis, to the Pennsylvania Department of State. The complaint alleged that Mr. Voros unlawfully engaged in the practice of geology in Pennsylvania without a license, and that PADEP approved the proposal for the Bark Camp project, crafted by Mr. Voros, granted a permit for the work on state lands, and relied upon his findings and analysis in the Bark Camp reports for other mine reclamation projects involving dredge and coal ash; thus facilitating and endorsing Mr. Voros’ unauthorized practice of geology. *See* attached.

Since the submission of the complaint, PADEP continues to rely upon the results and analysis of the Bark Camp reports in issuing new permits that facilitate the use of coal ash in mine reclamation, as was originally performed in the Bark Camp Demonstration Project. For instance, PADEP issued surface mining permit number 49773204C8 for the Locust Summit Operation in Mt. Caramel, Conyngham, and Butler townships. PADEP and its beneficial use program for coal ash require a professional geologist to prepare and certify plans for mine reclamation projects utilizing coal ash during the permit application process. 25 PA. CODE § 87.65(b). Yet, PADEP continues to authorize projects similar to the Bark Camp project, whose purported success is grounded in geological reports by an individual with no scientific license or expertise in any state. PADEP’s failure to independently assess the findings of the Bark Camp reports also has wide-reaching consequences beyond the borders of Pennsylvania, as numerous other states and the

Federal Environmental Protection Agency have relied upon the content of Mr. Voros' analysis and promulgated the documents on their respective websites. *See, e.g.*, <http://www.epa.gov/aml/tech/news/dredge.htm>;
<http://www.state.nj.us/transportation/airwater/maritime/pdf/coastreport.pdf>.

The Department of State's failure to complete the investigation related to Mr. Gadinski's complaint is inhibiting the relevant government agencies from taking ameliorative action. If determined that Mr. Voros did engage in the unauthorized practice of geology, he should be subject to discipline by the Board for Professional Engineers, Land Surveyors, and Geologists. Furthermore, PADEP should reevaluate its policy of issuing general permits for the use of dredge and coal ash in mine reclamation or else face ramifications for endorsing the unauthorized practice of geology—contrary to Pennsylvania law. The Pennsylvania Auditor should conduct a special performance audit on both the Pennsylvania Department of State and Department of Environmental Protection.

Requested Action Regarding the Department of State

The Department of State should be subject to a special performance audit by the Pennsylvania Auditor in order to determine the extent of the harm caused by its failure to investigate Mr. Gadinski's complaint and the related ramifications involved in PADEP's failure to protect the environment and public health with respect to the Bark Camp project and its reliance on Mr. Voros' unlawful geological interpretations. The refusal of the Department to fully investigate Mr. Gadinski's complaint stands counter to its statutory responsibilities regarding potential violations of licensure laws and is further undermining the Board of Professional Engineers, Land Surveyors, and Geologists ability to take appropriate disciplinary actions against Mr. Voros. *See*, 4 PA. CONS. STAT. § 1517.

The Department of State repeatedly informed Mr. Gadinski that the investigation into his complaint has not been completed because the Department lacked the financial means to obtain an outside expert to review its findings. The Department also refuses to comply with Right-to-Know requests for the results of the investigation into Mr. Voros, maintaining that relevant information is confidential because the requested materials pertain to on-going investigation. 65 PA. CONS. STAT. § 67.708(b)(17)(vi). However, it is unclear whether the Department is actually continuing its investigation or if it will remain suspended indefinitely due to alleged funding issues. Without independent assessment into Mr. Voros' findings, a resolution of the investigation may never emerge and PADEP may continue to rely upon the findings in the Bark Camp reports to the detriment of the environment, as well as public health and safety.

Moreover, Mr. Gadinski's complaint is not complex and does not require retention of an outside expert. The gist of the complaint is that Mr. Voros authored a report concerning geology and hydrogeology, yet he does not appear to be a registered professional geologist in the state of Pennsylvania and does not appear to have any training in either geology or hydrogeology.

Regardless of any claims about financial shortcomings, the Department still has a duty to perform investigations in a prompt and efficient matter upon the submission of a complaint to ensure other individuals and government agencies are in compliance with the law. 4 PA. CONS. STAT. § 1517. The Department's failure to fully investigate Mr. Gadinski's complaint is inhibiting the Board of Professional Engineers, Land Surveyors, and Geologists from taking appropriate disciplinary action against Mr. Voros and alerting PADEP of the potential failings with the Bark Camp reports. Whenever an individual or organization brings forth information that suggests a condition exists that threatens public health, safety, or the environment, PADEP is tasked with conducting its own investigation and taking ameliorative action; yet, the Department of State is failing to ensure such an investigation comes to fruition. *See, e.g.*, 25 PA. CODE § 109.2, 109.6.

As such, the Auditor General should conduct a performance audit of the Department of State to determine the extent to which the Department is harming the environment and public by failing to fully investigate and disclose the findings related to Mr. Voros' unauthorized practice of geology and PADEP's acquiescence and endorsement of his illegal geological interpretations and analysis. The Auditor General should issue a recommendation to the Department of State to expeditiously act on Mr. Gadinski's complaint and take all appropriate remedial action based upon Mr. Voros' unauthorized practice of geology.

Requested Action Regarding Department of Environmental Protection

The Department of the Auditor General should also subject PADEP to a special performance audit based on its violations of Pennsylvania laws and regulations by acquiescing to the unauthorized practice of geology and relying upon reports and findings that were not certified by a Pennsylvania-licensed geologist. *See*, 63 PA. CONS. STAT. § 148, *et seq.* PADEP provided the permit that facilitated the project and allowed COAST to place coal ash and dredge materials on the Bark Camp site, which is state property. PADEP failed to perform independent analysis to determine whether the Bark Camp project adequately complied with pertinent Federal and state environmental standards, and did not verify the work of a non-licensed scientist practicing geology within Pennsylvania. *E.g.*, 52 PA. CONS. STAT. §§ 1396.1—1396.19a; 35 PA. CONS. STAT. §§ 691.1—691.1001. By allowing COAST to operate on the Bark Camp site and by taking some samplings (although failing to perform extensive testing to ensure compliance with relevant environmental regulations) in connection with COAST's work, state funds and property were used as part of the project. PADEP knew Mr. Voros was not a licensed geologist, in Pennsylvania or any other state, and yet touted his findings as means to grapple with the mine reclamation problems plaguing Pennsylvania. *See Citizen Advocates United to Safeguard the Env't. v. Commonwealth of Pennsylvania*, EHB Docket No. 2006-005-L (Consolidated with 2005-329-L) (Nov. 2, 2007). Nevertheless, the most problematic of PADEP's actions persists, as the agency consistently espouses the results of the Bark Camp reports for other mine reclamation projects, contrary to its own regulations requiring licensed geologists to craft and certify geological reports to use coal ash, which serves to endorse Mr. Voros' unauthorized practice of geology within the Commonwealth of Pennsylvania.

As such, the Auditor General should conduct a performance audit of PADEP to determine the extent to which the Department is harming the environment and public by its acquiescence and endorsement of Mr. Voros' unauthorized practice of geology. The Auditor General should issue a recommendation that PADEP explicitly disclaim any reliance on the Bark Camp reports and geological analysis by Mr. Voros; rescind any and all permits for mine reclamation projects that relied upon the Bark Camp reports; and condition the reissuance of the relevant project permits on new applications with competent, complete reports by Pennsylvania-licensed geologists.

Sincerely,

Jeff Ruch
Executive Director

Megan Corrado
Special Investigator