



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

To: House and Senate Committees on Government Operations
Date: 16 January 2019
Re: Audit Recommendation Follow-Up

Each year we review prior audits to determine the extent to which the auditees have implemented our recommendations. We cannot compel state entities to do so, but we hope the recommendations are sufficiently clear and evidence-based to persuade managers to see their value. We look back one year and three years. The links will take you to the reports.

BGS – State Agency Energy Plan [Audit](#) [Rec. Follow-up Report](#)

BGS has partially or fully implemented 13 of the 14 recommendations we offered in 2015. The Department has ramped up its efforts in this area with the hiring of professional staff. However, state government can only make significant progress if adequate resources are made available.

Auditor's Comment 2018: "Although BGS specified energy reduction goals in the 2016 SAEP, the goals were not in alignment with the five percent annual energy reduction goal in Act 40 [2011]. BGS reported in the 2016 SAEP that the five percent annual energy reduction goal in Act 40 was not feasible given current economic conditions, technologies, and funding. BGS has not provided documentary evidence to show they sought an amendment to revise the Act 40 energy goals."

Funding for technically feasible efficiency efforts that achieve significant lifecycle cost savings is prudent, by definition. Therefore, the administration should not limit or delay such investments and should give BGS the resources necessary to meet the goals of Act 40.

AHS – Vermont Health Connect [Audit #1](#) [Rec. Follow-up Report #1](#)
[Audit #2](#) [Rec. Follow-up Report #2](#)

DVHA has partially or fully implemented 14 of the 17 recommendations we offered in 2015. DHVA took action to address our recommendations pertaining to VHC governance, project management, contracting, and financial controls. We are currently auditing the only recommendation rated "not implemented" (i.e., Medicaid premiums).

DOC – Transitional Housing [Audit](#) [Rec. Follow-up Report](#)

DOC has partially or fully implemented 8 of the 10 recommendations we offered in 2015. These dealt mostly with documentation about grantees providing services to offenders, including the adoption of performance measures with reliable data.

DOL, AOT & BGS – Worker Misclassification [Audit](#) [Rec. Follow-up Report](#)

DOL partially or fully implemented 10 of the 17 recommendations we offered in 2015. BGS adopted 3 of 5 and AOT 4 of 4. Below are some examples of recommendations not implemented. They resulted from problems with case management and related documentation. For example:

The Workers Comp (WC) *“division records show 30 investigations first started in 2011 have not been completed, and 134 cases categorized as active are assigned to investigators no longer employed by VDOL. The lack of follow through on these cases occurred because WC has not developed protocols for case reassignment and case management practices, such as standards for maximum caseloads per investigator and timely case completion.”*¹

DOL Recommendation #10: Develop standards for WC case management that include caseload standards for investigators, timeliness of case completion and protocols for case reassignment.

- Auditor’s Comment 2016: *VDOL provided a draft copy of the WC standards for WC investigations which states that investigations must be completed in 3 months or less. The draft includes protocols for case assignment and step-by-step investigative procedures but no protocols for case re- assignments. This policy has not been approved or finalized.*
- Auditor’s Comment 2018: *VDOL has not reported any additional corrective actions taken since the last time the SAO followed-up in 2016. Because two years have passed without finalization of the WC case management standards, we consider this recommendation to be not implemented.*

DOL Recommendation #13: Develop reporting functions for the WC database, including an aging schedule of outstanding cases, length of investigations, and status of key investigation activities.

- Auditor’s Comment 2016: *VDOL reported that it is working with the UI division and IT but did not provide any documentation to demonstrate the nature and status of the work that has occurred.*

¹ DOL Misclassification audit transmittal letter, August 31, 2015.

These were the audit objectives: (1) evaluate how decisions to investigate alleged employee misconduct are made, (2) assess the extent to which investigations into alleged misconduct are documented and completed in a timely manner, and (3) characterize the types of resolutions to alleged employee misconduct cases and evaluate the processes used to decide which type is appropriate.

In many cases, DHR stated explicitly that it “does not intend to implement [these] recommendations.” Here are some examples of recommendations ignored by DHR.

- #2: Develop and implement a procedure for ensuring that extensions of employees’ Temporary Relief from Duty (RFD) status beyond 30 workdays is approved.
- #5: Require that Appointing Authorities or designees document their rationale (e.g., analysis of the 12 factors) for the decision to impose a particular type of discipline.
- #6: Develop a mechanism to maintain a comprehensive and easily accessible record of all discipline and stipulated agreements for all employees and make this information available to appointing authorities and designees.
- #10: Develop a target for when AAs or designees are expected to finalize the disposition of a case and track the extent to which this target is being met. There could be separate targets depending on the type of expected outcome (e.g., unsubstantiated, suspensions, or stipulated agreements).

We also made recommendations to several entities whose misconduct-related activities are overseen by DHR (AOT, BGS, DOL, DPS and VVH) and they all informed us that DHR advised them “that the recommendations in question not be implemented.” Here are the three recommendations made to all five entities.

- #1: Develop a process in conjunction with DHR to document the decisionmaker for each disposition of an employee misconduct case, when the decision was made, and confirmation that the disposition was carried out.
- #2: When considering imposing discipline in an employee misconduct case and in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied.
- #3: Develop a process in conjunction with DHR to notify DHR of all employee misconduct allegations and resolutions.

As we made clear in the audit report, these recommendations flow directly from our findings, which themselves were derived from the evidence obtained during the audit. They are sensible and not terribly onerous. We disputed DHR’s objections to adopting the recommendations and responded in detail in Appendix IV of the audit report (see pages 52 – 56). In my experience, such a blanket refusal to implement recommendations is unusual and deserves scrutiny by this committee.

Note on relief from duty (RFD): There are circumstances where management believes that it is in the best interest of the parties to remove an employee from the workplace while allegations are investigated. In such instances, the employees are paid while the process plays out.

Our audit found that the State paid almost \$3 million in salaries and benefits to employees in temporary relief from duty status for alleged misconduct during our scope period (2014 – 2016). It appeared that some employees remained in this status longer than necessary. In some cases, the State paid the salaries and benefits of non-working employees after the investigation was completed—sometimes for months while the appointing authorities considered disciplinary options—even though the allegation was determined to be unsubstantiated or disposition of the case did not involve removing the employee from employment. If the State intends to return an employee to work, it is not fiscally prudent to continue to pay the salary and benefits of a non-working employee for weeks and sometimes months as decisions are made on the final dispositions that are less than dismissal.

DHR acknowledged the problem and stated that “DHR agrees that additional steps may be taken to ensure that employees are removed from RFD status as soon as possible.”²

I recently obtained information from DHR on the last two years of payments made to employees on relief from duty: \$1.84m for 2017 and \$2.35m for 2018. Clearly, the costs related to RFD have grown considerably since our audit and the State has spent more than \$7 million over the last four years to pay the salaries and benefits of non-working employees.

To be clear, there are many reasons for these delays, some unavoidable. But we found reason to believe that DHR and the appointing authorities could improve the process and save taxpayers’ money. I encourage you to invite DHR to explain what steps are being taken to reduce these expenditures.

DEC – Environmental Compliance [Audit](#) [Rec. Follow-up Report](#)

DEC has partially or fully implemented all seven of the recommendations offered in 2017.

² SAO Employee Misconduct audit report, Appendix IV (p.45): DHR Management comments.