



**Beth A. Wood, CPA**  
State Auditor

STATE OF NORTH CAROLINA  
**Office of the State Auditor**

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August 19, 2009

Mr. Steve Troxler, Commissioner of Agriculture  
Department of Agriculture and Consumer Services  
2 West Edenton Street  
Raleigh, North Carolina 27601

Dear Commissioner Troxler:

The Office of the State Auditor received a complaint through the *State Auditor's Hotline* that the Deputy Director of the Pesticide Section within the Department of Agriculture and Consumer Services Structural Pest Control and Pesticide Division was commuting in a State-owned vehicle without reimbursing the State. Pursuant to North Carolina General Statute § 147-64.6, our investigation of this matter resulted in the following findings and recommendations.

**1. Improper Use of a Publicly-Owned Vehicle**

Since July 2006, the Deputy Director of the Pesticide Section (Deputy Director) drove a State-owned vehicle between his home in Reidsville and a State office in Raleigh on almost a daily basis without appropriate justification and without reimbursement to the State. Further, he claimed compensatory time for traveling between his home and Raleigh. As a result, the Deputy Director received a financial benefit of \$36,546.71.

The Deputy Director recognized the benefit received by driving a State-owned vehicle. When told that the vehicle privilege might be revoked, he said that he could "not afford another car payment." According to the Deputy Director, he was never informed that he was required to reimburse the State.

The Deputy Director was provided a permanently assigned, agency-owned vehicle when hired as a field inspector in 1983. He continued driving a State-owned vehicle throughout his subsequent promotions to supervisor and Field Operations Manager. In July 2006, his position was reallocated to Deputy Director when the Structural Pest Control and Pesticide Division reorganized. The Director of the Structural Pest Control and Pesticide Division allowed the Deputy Director to continue driving a State-owned vehicle even after the reallocation. (See Finding 2)

When the position was reallocated from Field Operations Manager to Deputy Director, a new position description was developed that indicated that the "location of workplace" is the "Ballentine Building" in Raleigh. In addition, the Deputy Director has worked on a specific project and performed senior management duties that required his presence in the Raleigh office on a regular basis since 2005. However, the Deputy Director said his home is his designated "duty station."

North Carolina General Statute §14-247 pertaining to “Private use of publicly owned vehicle” states, “It shall be unlawful for any... employee of the State of North Carolina... to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the State.....” Further, N.C.G.S. §143-341(8)i 7a specifies that “every individual who uses a State-owned” vehicle “to drive between the individual’s official work station and his or her home shall reimburse the State.”

General Statutes specify that commuting privileges are not considered a private purpose “for those individuals whose office is in their home.” The Motor Fleet Management Regulations Manual clarifies that to qualify for “office-in-home,” the employee must not begin travel from his/her home to a State office on any two consecutive days or travel to any one State office more than two days a week.

Our analysis indicated that the Deputy Director averaged traveling to the Pesticide Office in Raleigh four days per week. The Deputy Director’s daily mileage logs for July 2006 through December 2008 indicate that he drove a State-owned vehicle from his home in Reidsville to the Raleigh office on 410 of 519 days (79%), traveling an average of 150 miles per day. In addition, the employee directory in the Ballentine Building lists the Deputy Director’s name and the Pesticide Section website lists the Deputy Director’s phone number as a Raleigh office land line. Therefore, the Deputy Director’s official office location should be a State office (the Ballentine Building) in Raleigh and not his home in Reidsville.

We determined the Deputy Director received a \$36,546.71 financial benefit by driving a State-owned vehicle 62,307 miles between Reidsville and Raleigh and by claiming 215 hours of compensatory time for travel between those locations over a 30 month period. Our calculation of benefits derived from the use of the publicly-owned vehicle was based upon the mileage logs and time sheets reviewed from July 2006 through December 2008 and by applying the federal reimbursement rates for travel and a prorated compensation rate for travel time claimed.

**Recommendation:**

The State-owned vehicle assignment to the Deputy Director should be revoked. The Department of Agriculture should take appropriate disciplinary action up to and including the repayment of benefits derived from the private use of a publicly-owned vehicle. In the future, when the Deputy Director is in travel status for field work, he should utilize the agency vehicles or the Motor Fleet Management vehicles from the State motor pool on an as-needed basis for cost efficiency.

**2. Director Allowed the Improper Use of a State Vehicle**

The Director of the Structural Pest Control and Pesticide Division (Director) misused his authority when he allowed the Deputy Director of the Pesticide Section to drive a permanently assigned, State-owned vehicle on a daily basis without reimbursement to the State.

The Structural and Pesticide Division restructured in 2006. As a result of the restructure, the Deputy Director was upgraded from Field Operations Manager to his current position. The Deputy Director informed us that he had not received the full salary increase to which he was entitled due to a lack of funds.

The Deputy Director told us he had been upset about not receiving the full salary increase and informally discussed his concern with the Director. The Deputy Director said that the Director told him he would be allowed to keep the State-owned vehicle for travel and keep his home as his designated duty station as a continued benefit if he would accept the new position without the full salary increase.

The Director said he did “not recall” having a specific conversation about the salary increase with the Deputy Director. However, the Director said that he had given the Deputy Director approval to maintain the vehicle assignment and Reidsville as his duty station.

The Department of Agriculture Human Resource (HR) Director understood the Deputy Director’s office to be located in Raleigh. The HR Director was not aware of the vehicle assignment or that the Deputy Director’s home was his designated duty station. The HR Director stated that no reimbursement had been paid by the Deputy Director.

**Recommendation:**

The Department of Agriculture should take appropriate disciplinary action against the Director for allowing the improper use of a State-owned vehicle.

**3. Absence of Teleworking Policies and Procedures and Lack of Control and Oversight of Duty Stations and Vehicle Assignments**

The Department of Agriculture does not have teleworking<sup>1</sup> policies and procedures in place as required by Office of State Personnel guidelines despite having an existing teleworking program. In addition, no records regarding designated duty stations and vehicle assignments are kept. Only immediate supervisors review mileage logs and only division directors approve duty stations and agency-purchased vehicle assignments.

The Office of State Personnel has established guidelines for agencies to follow in developing and implementing a teleworking program. According to the State Personnel Manual, “Agencies may allow employees to engage in teleworking in compliance with these rules. Each agency that permits teleworking must establish internal policies and procedures that identify criteria for jobs that are designated as telecommutable and shall identify the criteria for selecting employees who are eligible.” However, the Department of Agriculture has not developed formal teleworking policies and procedures.

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<sup>1</sup> A teleworking program permits employees to work at an alternate work location such as their homes.

We asked Office of State Budget and Management (OSBM) officials about the requirements for approval of an employee's home as their designated duty station. OSBM officials told us that, prior to January 1, 2007, each agency's management was required to report to OSBM the employees in their agency that were approved for home duty station status on the "Designation of Duty Station Spreadsheet" each calendar year. After the law changed<sup>2</sup>, OSBM has not required the agencies to report this information, but suggested that agencies keep a duty station list for good internal control. Since the law changed, the Department of Agriculture has not maintained this information.

Mileage logs are kept within the division; however, no one other than the division supervisor reviews this information and approves assignments. Our review of mileage logs for the Deputy Director's assigned vehicle revealed that the actual miles driven on official State business (excluding commuting miles between Reidsville and Raleigh) were less than the required 3,150 per quarter per N.C.G.S. §143-341 (8)i 7a. An annual review of the Deputy Director's mileage logs may have identified his improper use of a State-owned vehicle.

**Recommendation:**

The Department of Agriculture should develop and implement teleworking policies and procedures. In addition, management should initiate a process for annual review of duty stations, vehicle assignments, and associated mileage logs. The process should include an approval process and proper recordkeeping.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by September 2, 2009. In accordance with General Statute § 147.64.6 (c)(12), the Governor, the Attorney General, and other appropriate officials will receive a copy of this management letter. If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from employees of the Department of Agriculture and Consumer Services.

Sincerely,



Beth A. Wood, CPA  
State Auditor

**Management letters and responses receive the same distribution as audit reports.**

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<sup>2</sup> N.C.G.S. § 138(6)(a)(1) "any designation of an employee's home as his duty station by a department head shall require approval by the Office of State Budget and Management on an annual basis." Rescinded with House Bill 749, effective January 1, 2007.



Steve Troxler  
Commissioner

## North Carolina Department of Agriculture and Consumer Services

September 1, 2009

Beth A. Wood, CPA  
State Auditor  
Office of the State Auditor  
2 S. Salisbury Street  
Raleigh, North Carolina 27603

Dear State Auditor Wood:

This is in response to your recent letter containing findings and recommendations as a result of your investigation of an anonymous complaint that Mr. Patrick Jones, an employee in the department's Division of Structural Pest Control and Pesticides, was commuting in a state-owned vehicle without reimbursing the state.

I assure you that there was no intent on anyone's part to violate any State laws, rules or policies, and we have taken corrective action in response to your recommendations.

This letter responds to each finding in clarifying and explaining the circumstances surrounding Mr. Jones' use of the pick-up truck assigned to him.

### Finding 1: Improper Use of a Publicly-owned Vehicle

At the time Mr. Jones was promoted from Field Operations Manager to Deputy Director in 2006, both Mr. Jones and his supervisor, the Director of the Structural Pest Control and Pesticides Division, intended that he would be working out of his home, traveling across the State, supervising field personnel, interacting with other agencies, with the public and with persons regulated under the Pesticide Law. I believe that both Mr. Jones and the Director acted in good faith and with honest intent in allowing Mr. Jones to continue to work out of his home, and treating his home as his work station. However, as shown by his travel records, Mr. Jones ended up making frequent trips to Raleigh to work at the Division offices on Blue Ridge Road. His duties did not evolve as he and his supervisor had planned. Instead, he was needed at the Division offices in Raleigh on many occasions, so that is where he spent much of his time during this period. The listing of the Raleigh office on the cover sheet of his job description was simply an oversight, and the listing of Mr. Jones on the office directory sign is based on the organizational chart, not physical location. The Division website lists the Raleigh main office number as his phone number because we do not list any field personnel



home numbers or cell numbers on the website. Both Mr. Jones and his supervisor intended for his official work station to be his home.

In hindsight, we should have had a system in place to periodically review designation of home duty stations to ensure that designated duty stations are consistent with actual work practices, and to ensure that employees do not routinely travel from a home work station to a State office. In Mr. Jones's case, the vehicle previously assigned to him will now be reassigned to another employee, or parked at Division offices in Raleigh, and used as needed by Division employees. His official duty station is now the Division office in Raleigh.

We do not believe that Mr. Jones engaged in any intentional misconduct, and therefore we do not intend to take any disciplinary action against him. Pat Jones is an outstanding employee. He is honest, hard-working, and because of his knowledge and experience, is one of our most valued employees. With his supervisor's permission, he drove a State vehicle to a State office for the purpose of performing his assigned work duties. He did not use the State vehicle for personal business. He made no effort to conceal his use of the vehicle. In fact, he kept complete and accurate travel records which formed the basis of the investigation. Under these circumstances, we believe it would be unjustified and unfair to demand that he repay the State for the imputed value of using the assigned vehicle.

#### Finding 2: Director Allowed the Improper Use of a State Vehicle

The finding states that the Division Director misused his authority when he allowed Mr. Jones to drive a permanently assigned vehicle on a daily basis without reimbursement, and it suggests that he did so as a means to encourage Mr. Jones' acceptance of a position reallocation in 2006 for which he did not receive a full salary increase.

The Division Director authorized the continued assignment of a department-owned vehicle to Mr. Jones subsequent to the reallocation of his position in 2006 because of the nature of work and job responsibilities associated with his role as Deputy Director. As noted earlier, the expected duties did not evolve as planned, and Mr. Jones was needed in the Raleigh office more often than expected. His travel to Raleigh since 2006, while frequent, was a direct result of our continuing involvement in investigating and litigating a significant federal case referral from the United States Environmental Protection Agency against a national produce firm, Ag Mart, for violations of laws and rules governing the use and application of agricultural pesticides, and its alleged illegal exposure of workers to pesticides in violation of the State's worker protection standards in 2004 and 2005. The Ag Mart case is among the most complex and difficult that our Department has ever encountered. It prompted former Governor Easley to appoint a Task Force charged with developing recommendations to prevent agricultural pesticide exposure. The Ag Mart case also led to the introduction of legislation in the 2008 and 2009 Sessions of the General Assembly, including House Bill 847, which was ratified in 2008. H.B.847 provided for the adoption of additional regulations for protecting workers and providing additional information on pesticide

applications in agricultural production. Subsequently, I have appointed an Interagency Pesticide Work Group to consider additional needs for ensuring worker safety when applying pesticides, additional training requirements for pesticide applicators, and investigation of emerging technologies for reducing exposure to pesticides.

This case spawned constant requirements for the collection and analysis of complex technical data that legal counsel depended upon in defending the Department's findings involving Ag Mart. Mr. Jones has had a pivotal and critical role in our legal proceedings against Ag Mart. These demands on Mr. Jones for on-site work in Raleigh were not anticipated, and he has had to balance those demands with the ongoing requirements of his principal role as one of two Deputy Directors with oversight responsibility for our field inspections programs. Though certainly more frequent than we anticipated, his travel to Raleigh was incidental to his primary responsibility for field-based work with our contingent of pesticide inspectors stationed throughout North Carolina. As the Ag Mart case comes to a close, we fully expect that Mr. Jones will dedicate all of his time to his oversight and managerial role over the pesticides field inspections program.

The assertion in Finding 2 that Mr. Burnette told Mr. Jones that he could keep the vehicle as a continued benefit in lieu of a full salary increase due him upon the reallocation of his position in 2006 is apparently a misunderstanding. Mr. Jones received the full salary increase due him when his position was reallocated in 2006 from a Field Operations Manager to Deputy Director. Mr. Burnette stated to the auditor that he did not recall a conversation regarding the continuation of the vehicle assignment as a benefit in lieu of a full salary increase. While the benefits of having access to a State vehicle may have been pointed out, it was not intended as a trade-off for a salary increase.

There was also some confusion about whether the Motor Fleet Management rules for "office-in-home" vehicle assignments apply to agency-owned vehicles. Mr. Burnette contacted Motor Fleet Management for guidance as to the applicability of regulations governing the assignment of agency-owned vehicles, and was told that Motor Fleet Management regulations did not apply. Nevertheless, we agree that Mr. Burnette should have made further inquiry as to whether Mr. Jones's official duty station should have been changed to Raleigh due to the frequency of his trips there, and Mr. Burnette has been counseled about the need to do this in the future in similar situations.

### Finding 3: Absence of Teleworking Policies and Procedures and Lack of Control and Oversight of Duty Stations and Vehicle Assignments.

While we have many inspectors and field personnel who work from their homes, we do not consider this to be teleworking, since they do most of their actual work away from home. We did not consider Mr. Jones to be engaged in teleworking during the

time in question here. Nevertheless, as recommended, we are in the process of developing a teleworking policy based on Office of State Personnel guidelines, and should have this in place soon.

We also agree with the recommendation to initiate a process for annual review of duty stations, vehicle assignments and mileage logs, and are in the process of implementing this as well.

Thank you for the investment of time and effort in responding to this complaint. We will continue to make every effort to assure that all department employees comply with all applicable laws, rules and policies.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven W. Troxler", with a long horizontal flourish extending to the right.

Steven W. Troxler  
Commissioner