



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
December 29, 2011

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that New York State Department of Environmental Conservation (DEC) employee Charles Thropp failed to divest himself of his financial interest in Cal Ban Corporation, an oil and gas company operated by his family members which is regulated by DEC. Thropp also failed to disclose his continued financial interest in the company to DEC. The Inspector General is referring this matter to the New York State Joint Commission on Public Ethics, and recommends that DEC take appropriate action with respect to Thropp.

The Inspector General also found that DEC managers in Region 9 failed to fully inquire as to the extent of Thropp's ties to Cal Ban, and therefore were not aware of Thropp's continued ownership in Cal Ban at the time of his hiring. Further, these DEC managers failed to act when Thropp, while employed at DEC, disclosed that he was owed a substantial sum of money by Cal Ban. In neither instance did DEC managers document these matters.

Notwithstanding this, the Inspector General did not find evidence that Thropp's relationship affected DEC's inspection of wells operated by Cal Ban after a complaint about the wells was filed with DEC. In response to the complaint, DEC, in order to avoid a conflict of interest, assigned staff from Region 8, the region adjacent to Region 9 in which Cal Ban is located and Thropp works. Enforcement action resulting from the inspection is continuing.

The Inspector General recommends that DEC undertake a comprehensive review of its policy regarding conflicts of interest. As part of this review, DEC should ensure that employees are aware of their reporting requirements in situations involving actual, apparent, or potential conflicts of interest. The review also should address the actions of supervisors in inquiring into such situations and ensuring that appropriate measures are taken to avoid conflicts of interest. These supervisory actions should be properly documented at the time they occur.

ALLEGATION

On September 9, 2010, the Inspector General and DEC received a complaint from a landowner that oil wells operated on his property by Cal Ban were not in compliance with DEC regulation and that DEC had failed to take appropriate action regarding these wells because DEC Inspector Charles Thropp was an officer of Cal Ban. The complaint further alleged that Thropp's supervisor, Chris Miller, similarly had family members that operated oil wells in the DEC Region.

SUMMARY OF INVESTIGATION

Thropp Retained Ownership in Family Oil Business After He Was Hired by DEC

DEC through its Division of Mineral Resources regulates mineral extraction and gas and oil drilling in New York State. In DEC's Region 9, which encompasses Allegany, Cattaraugus, Chautauqua, Erie, Niagara, and Wyoming counties, these regulatory activities are supervised by Regional Minerals Manager Christopher Miller. Miller began employment with DEC in 1985 and has held his current position since 2002. In November 2005, DEC hired Charles Thropp as a Mineral Resources Specialist assigned to oil and gas well inspection and enforcement activities in Region 9, and supervised by Miller.

Before joining DEC, Thropp was employed as president of Cal Ban Corporation, an Allegany, New York, based firm which operates oil wells in various areas within Region 9. Thropp also owned at least one-seventh of Cal Ban stock, with the remainder owned by other members of Thropp's family. Thropp's resume and DEC employment application noted his position at Cal Ban. Furthermore, Miller, when interviewed by the Inspector General, stated that he and his DEC superiors knew at the time of Thropp's hiring that Cal Ban was operated by Thropp's family.

Miller told the Inspector General that he and other DEC officials had advised Thropp that, if hired, he would be required to "divorce himself" from Cal Ban. As a result, prior to commencing his DEC employment, Thropp resigned as Cal Ban president, a position his sister then assumed. Thropp, however, retained his ownership interest in the company. When the Inspector General asked Miller what was specifically communicated to Thropp regarding "divorc[ing] himself" from Cal Ban, Miller stated that he told Thropp to resign as an officer of the company. Questioned further if the directive also required that Thropp divest himself of any ownership of the firm, Miller said that it did. When interviewed by the Inspector General and asked about the conditions of his hiring by DEC, Thropp stated that he was required to resign as Cal Ban president, which he did. Thropp said that he could not recall if other actions were required, but that he did everything he was directed to do.

Miller expressed surprise that Thropp had retained his ownership interest in Cal Ban. However, Miller acknowledged that neither he nor anyone else at DEC specifically asked Thropp if he had divested himself of ownership interest in Cal Ban, but instead

assumed Thropp had done so when he resigned as company president. Notably, none of these discussions surrounding Thropp's hiring were documented.

Miller further reported that some time after Thropp's hiring, Thropp revealed that Cal Ban owed him a large sum of money. Miller claimed that while he would have inquired into that matter had he known of it prior to hiring Thropp, upon learning of it at a later time, he did not inquire further or take any other action. This issue also was not documented by Miller or others at DEC.

Thropp Divests Himself of Ownership in Cal Ban During Inspector General's Investigation

Thropp advised the Inspector General that Cal Ban was owned by his mother, two sisters, brother and himself, and he admitted that he retained his ownership share when he began his DEC employment. He related that he knows of no other investors in the company. He stated that since his hiring by DEC, he has had no involvement in corporate decisions of Cal Ban, performs no work or services for the firm, and receives no income from it.

Cal Ban records subpoenaed by the Inspector General confirmed that Thropp had resigned as company president at the time his DEC employment began, but that he retained a significant ownership interest, at least one-seventh, of the company. The documents also showed that Thropp had not received any dividends, salary or other financial benefits from Cal Ban since he commenced work at DEC. A review of Thropp's bank accounts also revealed no receipt of salary or dividend payments from Cal Ban.¹

Thropp also advised the Inspector General that, in addition to his ownership interest in Cal Ban, the firm owed him "a quarter of a million dollars." He explained that during his tenure as president of Cal Ban, he often did not cash his payroll checks, and that he considered his uncashed checks a loan to the company to pay off the bank loan that Cal Ban had secured for capital to begin drilling operations. Thropp said that he was not concerned about his "loan" to the company at the time because he was a part owner and responsible for operating it. Since then, he said, he has "written Cal Ban off" and does not expect to receive any re-payment or other future benefit.

As noted, Thropp asserted that he did not recall DEC ever discussing with him a required divestiture of his Cal Ban stock. He explained that if such a discussion occurred, it would have caused him a "big problem" because there was no way for him to divest himself of the stock. The Inspector General then asked if there was a way for him

¹ The Inspector General's examination identified a \$50 check from Cal Ban dated January 18, 2008 paid to Thropp during this period Thropp was unable to explain the reason for this payment. Cindy Sarokes, Thropp's sister and the current president of Cal Ban, later advised the Inspector General that the \$50 payment represented reimbursement to Thropp for gasoline he purchased for his mother's car when her Cal Ban corporate credit card would not work.

to do so currently, and he again said no. Despite this assertion, within days of the interview, Thropp transferred all of his Cal Ban stock to his sister. Thropp contacted the Inspector General to report and provide evidence of this transaction.

Thropp's Conduct Implicates DEC Policy and the Public Officers Law

Thropp's failure to disclose his continued ownership interest in Cal Ban following his hiring by DEC implicates DEC's Conflict of Interest Policy (Section III-E(1)). This policy requires employees to make an "accurate assessment" as to whether outside activities involve an actual, apparent or potential conflict of interest. Where an employee has any reason to believe that an "apparent or potential conflict exists," that employee is required to obtain written approval from the Division or Regional Director prior to employment with DEC. Given that Thropp owned part of a company involved in the same business activity and in the same geographic area in which he performed regulatory activities, Thropp had a duty to bring his interest in Cal Ban to DEC's attention. In fact, Section III-B (5) of the Conflict of Interest Policy expressly cites ownership of stock in a company "which is under the employee's direct regulatory jurisdiction" as an example of a situation which "may pose a conflict and it may be appropriate to seek an opinion" from DEC. Similarly, Thropp should have disclosed to DEC the approximately \$250,000 he claimed that Cal Ban owed him.

Thropp's failure to advise DEC that he retained an ownership interest in Cal Ban also implicates § 74 of the Public Officers Law.² Public Officers Law § 74(3) states in pertinent part:

f. An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise

² As Thropp does not hold a policy making position at DEC, he is not required to submit a financial disclosure statement pursuant to the Public Officers Law, which would have required disclosure of the loan to Cal Ban and his percentage interest in the company.

suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

No Evidence That Thropp's Relationship Affected DEC Inspection of Cal Ban Wells

The Inspector General found that DEC managers in DEC Region 9 appropriately assigned staff other than Thropp to review a complaint specifically related to Cal Ban activities. In September 2005, a landowner in Region 9 complained to DEC that oil wells operated on his property by Cal Ban pursuant to a lease did not conform to DEC regulations. Miller assigned Mineral Resources Technician Brian Jandrew to inspect the wells. During an inspection in October 2005, Jandrew found no major environmental concerns, and, as a result, no enforcement action was commenced against Cal Ban. Both the complaint and ensuing inspection occurred prior to Thropp's hiring by DEC.

In August 2010, the landowner again complained to DEC regarding the lack of enforcement action against Cal Ban related to the condition of the wells on his property. Given Thropp's employment in Region 9, to avoid any conflict, DEC sent inspectors from Region 8 to the property at issue to conduct an inspection of the Cal Ban operated oil wells. They conducted inspections of 32 wells and two abandoned wells on September 29 and October 7, 2010. The inspections found that none of the wells was producing oil at the time of the inspection, but a number of the wells showed evidence of being capable of doing so. The inspection also found that a number of the wells were discharging oil and/or brine to the ground. As a result, DEC commenced an enforcement proceeding against Cal Ban alleging, among other issues, that Cal Ban failed to accurately report annual production and allowed discharge of oil and brine. The enforcement action is continuing as of this date.

The Inspector General found no evidence that Thropp's relationship affected DEC's inspection of the Cal Ban operated wells or DEC's response to the inspections. The first complaint of September 2005 was handled prior to Thropp's employment with DEC. Jandrew, the employee assigned to the matter, confirmed that Thropp played no role in the inspection; that he did not speak with Thropp regarding the inspection; and that Thropp made no attempts to influence the findings of his inspection.³

When the second complaint regarding Cal Ban was received in August 2010, subsequent to Thropp's hiring, DEC took actions to avoid a conflict of interest. Aware that Thropp's family owned Cal Ban, DEC assigned staff from Region 8 to conduct a complete inspection of Cal Ban's wells. This inspection found significant violations and an enforcement action has been initiated against Cal Ban.⁴ Neither Thropp nor any other Region 9 employee had any involvement in the inspection and follow-up actions.

³ Thropp now supervises Jandrew, but he did not at the time that Jandrew conducted the inspection of the Cal Ban wells.

⁴ Given the passage of five years between the Jandrew inspection and the Region 8 staff's inspection, it is impossible to make a meaningful comparison of the two.

Relatives of Miller, Thropp's Supervisor, Also Operate Oil Firms in Region 9

It must be noted that the Inspector General confirmed that Miller, Thropp's supervisor, also has relatives in the oil and gas industry in Region 9. According to Miller, he has no ownership interest in the companies, which are operated by his parents and brother. While Miller stated that he advised DEC superiors of these relationships at the time of his hiring in 1985, his DEC personnel file similarly contains no documentation concerning this issue. Miller stated that DEC has never received a complaint regarding the companies operated by his relatives, but that if such an event occurred, he would handle it as he did the Cal Ban complaint by avoiding involvement consistent with DEC policy and consulting his superiors.

FINDINGS AND RECOMMENDATIONS

The New York State Inspector General found that DEC employee Charles Thropp failed to divest himself of his financial interest in Cal Ban Corporation, an oil and gas company operated by his family members which is regulated by DEC. Thropp also failed to disclose his continued financial interest in the company to DEC. The Inspector General is referring this matter to the New York State Joint Commission on Public Ethics, and recommends that DEC take appropriate action with respect to Thropp.

The Inspector General also found that DEC managers in Region 9 failed to fully inquire as to the extent of Thropp's ties to Cal Ban, and therefore were not aware of Thropp's continued ownership in Cal Ban at the time of his hiring. Further, these DEC managers failed to act when Thropp, while employed at DEC, disclosed that he was owed a substantial sum of money by Cal Ban. In neither instance did DEC managers document these matters. Likewise, the personnel file of Christopher Miller, Thropp's supervisor, contains no documentation relating to Miller's family's involvement in the oil and gas industry.

The Inspector General found no evidence that Thropp's relationship affected DEC's inspection of wells operated by Cal Ban after a complaint about the wells was filed with DEC. In response to the complaint, DEC, in order to avoid a conflict of interest, assigned staff from Region 8, the region adjacent to Region 9 in which Cal Ban is located and Thropp works. Enforcement action resulting from the inspection is continuing.

The Inspector General recommends that DEC undertake a comprehensive review of its policy regarding conflicts of interest. As part of this review, DEC should ensure that employees are aware of their reporting requirements in situations involving actual, apparent, or potential conflicts of interest. The review also should address the actions of supervisors in inquiring into such situations and ensuring that appropriate measures are taken to avoid conflicts of interest. These supervisory actions should be properly documented at the time they occur.

* * *

The response of DEC to the Inspector General's report appears on the following pages. The response states that Thropp obtained an "opinion from the Commission on Public Integrity" regarding his DEC employment and interest in Cal Ban. The Inspector General notes that Thropp obtained an informal opinion on these matters from an associate counsel at the Commission on Public Integrity, not a formal opinion of the Commission, and that Thropp requested the informal opinion after he was interviewed by the Inspector General during this investigation.

ANDREW M. CUOMO
GOVERNOR



JOE MARTENS
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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DEC 28 2011

Mr. Leonard A. Cohen
Chief Counsel
Office of the Inspector General
Empire State Plaza
Agency Bldg 2 16th floor
Albany, New York 12223

Dear Mr. Cohen:

This is in response to your letter of December 6, 2011 concerning DEC employee Charles Thropp who was found to have failed to divest himself of his financial interest in Cal Ban Corporation, an oil and gas company operated by his family members which is regulated by DEC. Thropp also failed to disclose his continued financial interest in the company to DEC.

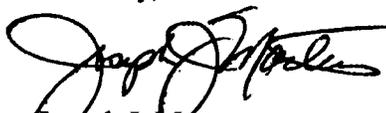
The Department has taken the following measures with respect to this matter:

1. Charles Thropp divested himself of his remaining interest in Cal Ban on June 30, 2011;
2. Charles Thropp requested an opinion from the Commission on Public Integrity about his employment at DEC and his interest in Cal Ban (enclosed). The letter acknowledges that Mr. Thropp has divested himself of any interest in Cal Ban, does not inspect any wells related to the family business and that Mr. Thropp continues to hold a note for money owed him by the Corporation. The opinion states: "there does not appear to be any further steps that you need to take in order to be compliant with the Public Officers Law. Your purely financial interest in Cal Ban Corp, which consists of holding a note, does not create the appearance of a conflict of interest..."
3. All matters related to Cal Ban are forwarded to DEC central office and then transferred to a different Regional Office (Region 8). The same is done with matters related to the family business owned by Chris Miller;
4. Charles Thropp has been counseled to not discuss any issues related to Cal Ban in his employment at DEC;



5. Your report recommends that DEC undertake a comprehensive review of its policy regarding conflicts of interest and as part of this review, DEC should ensure that employees are aware of their reporting requirements in situations involving the actual, apparent or potential conflicts of interest. DEC has a Commissioner's Policy with respect to Conflict of Interest and will undertake a review of the policy in response to your report. DEC has conducted ethics training agency-wide in 2010 and 2011 and the training included a discussion about conflict of interest issues. Additional agency-wide training is not currently being scheduled because DEC is awaiting further guidance from the new Joint Commission on Public Ethics on interpretation of the new ethics law;
6. A separate training session with respect to ethics and conflict of interest, conducted by the DEC Ethics Officer, has been scheduled for February 8, 2012 for all Region 9 Oil and Gas supervisors and staff.

Sincerely,



Joseph J. Martens

Enclosure