



Department of Environmental Protection Office of Inspector General

June 9, 2022

Report A-2122DEP-002

Operational Review of the Ethanol/Biodiesel Program

INTRODUCTION

The Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an operational review of the Division of Waste Management (Division) Ethanol/Biodiesel Program (Program). This review was initiated as a result of the Fiscal Year (FY) 2021-2022 Annual Audit Plan.

BACKGROUND

On July 1, 2020, Section 376.3071, Florida Statutes (F.S.), was amended to establish funding for ethanol or biodiesel damage and preventative measures. Funding of up to \$10 million each fiscal year from the Inland Protection Trust Fund (IPTF) will be paid for the costs of labor and equipment to repair or replace petroleum storage systems that may have been damaged from the storage of fuels blended with ethanol or biodiesel, or for preventative measures to reduce the potential for such damage. The Program is administered under the Permitting Compliance Assistance Program (PCAP) due to activities consistent with storage tank permitting, inspection, and compliance.

Ethanol/Biodiesel Program Section 376.3071(15), F.S.

The department shall pay, pursuant to this subsection, up to \$10 million each fiscal year from the fund for the costs of labor and equipment to repair or replace petroleum storage systems that may have been damaged due to the storage of fuels blended with ethanol or biodiesel, or for preventive measures to reduce the potential for such damage.

The Program began issuing purchase orders for ethanol or biodiesel damage and preventative measures in February 2021. As of November 24, 2021, a total of 128 purchase orders totaling \$2,235,810.22 had been issued to 33 petroleum storage system owners/operators.

RESULTS OF AUDIT

Section 376.3071(15)(a)1., F.S.: Application Request for Payment

Based on the requirements under Section 376.3071(15)(a)1., F.S., the Program has developed standardized forms for application and payment procedures, pursuant to Section 376.3071(15)(d), F.S. These forms include an application, affidavit template, application tracking worksheet, invoice tracking worksheet, and an application checklist. Based on our review, the information required under Section 376.3071(15)(a)1., F.S., was included in the application and affidavit template, with some exceptions. The Program application form also includes a requirement for the applicant to demonstrate reasonableness of costs. We reviewed application documents submitted for a sample of 15 purchase orders totaling \$256,829.74. For all 15, the Program received the required

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

application and affidavit documents from the applicant. However, we noted that the submitted affidavits did not include the petroleum storage system specialty contractor's attestation of opinion regarding damage, but rather that the contractor had reason to believe that the Underground Storage Tank (UST) equipment may have been damaged to varying degrees as a result of the storage of fuel blended with ethanol/biodiesel.

Section 376.3071(15)(a)2., F.S.:

Application Review

Section 376.3071(15)(a)2., F.S., requires that, *the department shall review applications for completeness, accuracy, and the reasonableness of costs and scope of work.*

Reasonableness of Costs

The Program requires the applicant to provide documentation supporting reasonableness of costs. Of the 128 purchase orders issued through November 24, 2021, 125 (97.5%) included applications with proposals from the same contractor. We reviewed documentation provided for the reasonableness of costs in the applications from the 15 sampled purchase orders. Based on our review, all 15 included the same quotes from the same three contractors for each item within their scopes of work. The costs of some of the submitted items appeared excessive.

Completeness and Accuracy

To review for completeness and accuracy of each application, the Program developed an application checklist. The checklist documents the Program's review of applicant information, contractor information, documentation provided, costs not eligible for funding, and the scope of work. The Program could only provide application checklists for ten of the 15 sampled purchase orders. Based on our review, all ten were completed and generally tracked the accuracy and completeness of applications. However, the methodology of the Program's review of costs was not indicated in the checklist document. The Program also could not

**Required Documentation for Program Funding
Section 376.3071(15)(a)1., F.S.**

The petroleum storage system owner or operator may submit a request for payment to the department along with the following information:

- a. *An affidavit from a petroleum storage system specialty contractor attesting to an opinion that the petroleum storage system may have been damaged as a result of the storage of fuel blended with ethanol or biodiesel or may not be compatible with fuels containing ethanol or biodiesel, or a combination of both. The affidavit must also include a proposal from the specialty contractor for repair or replacement of the equipment, or for the implementation of other preventive measures to reduce the probability of damage. If the specialty contractor proposes replacement of any equipment, the affidavit must include the reasons that repair or other preventive measures are not technically or economically feasible or practical.*
- b. *Copies of any inspection reports, including photographs, prepared by the specialty contractor or department or local program inspectors documenting the damage or potential for damage to the petroleum storage system.*
- c. *A proposal from the specialty contractor showing the proposed scope of repair, replacement, or other preventative measures, including a detailed list of labor, equipment, and other associated costs. In the case of replacement or repair, the proposal must also include provisions for any preventative measures needed to prevent a recurrence of the damage, such as the use of corrosion inhibitors, the application of coatings compatible with ethanol or biodiesel, as appropriate, and the adoption of a maintenance plan.*
- d. *For proposals to replace storage tanks or piping, a statement from a certified public accountant indicating the depreciated value of the tanks or piping proposed for replacement. Applications for such proposals must also include documentation of the age of the storage tank or piping. Historical tank registration records may be used to determine the age of the storage tank and piping. The depreciated value shall be the maximum allowable replacement cost for the storage tank and piping, exclusive of labor costs. For the purposes of this paragraph, tanks that are 20 years old or older are deemed to be fully depreciated and have no replacement value.*

**Documentation Requirements
Ethanol/Biodiesel Application Form, Section IV**

The Ethanol/Biodiesel Application Form states that, *The Applicant must demonstrate reasonableness of costs per s. 376.3017(15)(a)2., F.S. [Sic]*

This can be demonstrated by:

- a. *Providing scopes of work and cost proposals from three different PSSCs;*
- b. *Providing scopes of work and associated costs from completed work with similar scope; or*
- c. *Supplying an average or range of standard industry costs for a similar or comparable scope of work.*

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

provide other supportive analysis that the submitted documents were reviewed for reasonableness.

Application Approval

The Program has also developed an application tracking worksheet, which is used for new applications, as well as those resubmitted with additional information. For the 15 sampled purchase orders, the Program performed 32 reviews of the corresponding applications. Additional reviews were due to applications being resubmitted with additional information. We requested the documents received and sent by the Program to verify the dates on the application tracking worksheet. Electronic mail correspondence was provided by the Program for applications received, requests for additional information sent, and the issuance of approval orders. However, no correspondence was provided showing the date of completion for the Program's review. Based on the Program's application tracking worksheet, 19 of the 32 application reviews were approved, denied, or had a request for additional information within 30 days of receipt.

Section 376.3071(15)(b), F.S.: Purchase Orders

The 15 purchase orders included in our sample included costs for replacement and preventative maintenance. All 15 purchase orders reflected a payment due to the owner for the cost of the scope of work approved by the Department, less a deductible of 25 percent. Of the 15, 11 had been completed at the time of our review, with a submitted invoice for 75% of the approved scope of work. None of the purchase orders that included preventative maintenance had a preventative maintenance schedule. According to the Program Administrator, the preventative maintenance work was limited to a single occurrence. Of the 15 purchase orders that did not have preventative maintenance contracts, we verified all included a statement that the scope of work must be substantially completed and paid for by the petroleum storage system owner or operator within 180 days after the date of the purchase order. At such time the purchase order is void.

Section 376.3071(15)(c)1., F.S.: Invoices

The purchase orders issued included Program developed deliverables and invoicing requirements. Invoices are required to be provided within 30 days of the completion of work. These invoices must include the following:

Application Review and Approval Section 376.3071(15)(a)2., F.S.

The department shall review applications for completeness, accuracy, and the reasonableness of costs and scope of work. Within 30 days after receipt of an application, the department must approve or deny the application, propose modification to the application, or request additional information.

Purchase Order Issuance Section 376.3071(15)(b), F.S.

If an application is approved, the department shall issue a purchase order to the petroleum storage system owner or operator. The purchase order shall:

- 1. Reflect a payment due to the owner for the cost of the scope of work approved by the department, less a deductible of 25 percent.*
- 2. State that payment is not due to the owner pursuant to the purchase order until the scope of work authorized by the department has been completed in substantial conformity with the purchase order.*
- 3. Except for preventive maintenance contracts, specify that the work authorized in the purchase order must be substantially completed and paid for by the petroleum storage system owner or operator within 180 days after the date of the purchase order. At such time the purchase order is void.*
- 4. For preventative maintenance contracts, the department shall develop a maintenance completion and payment schedule for approved applicants. The failure of an owner or operator to meet scheduled payments shall invalidate the purchase order for all future payments due pursuant to the order.*

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

- A standardized invoice with all costs listed and the detail of work performed, including specific dates of service/work performed;
- An attestation from the contractor that the work has been completed, including proof of payment; and
- Proof of notification to the Department’s contracted County inspectors of work being performed with a minimum of seven days advance notice.

**Purchase Order Payment
Section 376.3071(15)(c)1., F.S.**

(c)1. Except for maintenance contracts, the applicant may request that the department make payment following completion of the work authorized by the department, in accordance with the terms of the purchase order. The request must include a sufficient demonstration that the work has been completed in substantial compliance with the purchase order and that the costs have been fully paid. Upon such a showing, the department must issue the payment pursuant to the terms of the purchase order.

Within our sample of 15 purchase orders, 11 had submitted invoices and received payment from the Department at the time of our review. The remaining four purchase orders had not been completed and had not yet reached the 180-day deadlines. The 11 submitted invoices were reviewed for adherence to the Program deliverable and invoicing requirements. Based on our review, all 11 invoices were completed within 180 days from the purchase order issuance date and provided standardized invoices with costs listed and dates of service, Post Work Certification/Attestations from the assigned contractor, proof of payment, and proof of the Department’s contracted County inspector notification. However, the Program invoicing requirements lack specification regarding the records needed to show detail of work and the dates of service. The standardized invoices did not include details of work performed other than what was included within the approved scopes of work.

Section 376.3071(15)(g), F.S.: Ineligible Costs

Within the application review process, the Program reviews the scope of work and requested funding. This is tracked within the application checklist. Based on our review of scopes of work, the 15 purchase orders did not contain ineligible costs and there were no payments issued for facilities with documented noncompliance.

**Ineligible Program Costs
Section 376.3071(15)(g), F.S.**

Payments may not be made for the following:

1. *Proposal costs or costs related to the preparation of the application and required documentation;*
2. *Certified public accountant costs;*
3. *Except as provided in paragraph (j), any costs in excess of the amount approved by the department under paragraph (b) or which are not in substantial compliance with the purchase order;*
4. *Costs associated with storage tanks, piping, or ancillary equipment that has previously been repaired or replaced for which costs have been paid under this section;*
5. *Facilities that are not in compliance with department storage tank rules, until the noncompliance issues have been resolved; or*
6. *Costs associated with damage to petroleum storage systems caused in whole or in part by causes other than the storage of fuels blended with ethanol or biodiesel.*

Section 376.3071(15)(i), F.S.: Funding

The Program created a tracking worksheet that includes the total amounts awarded to each owner/operator within that year. The worksheet also marks owner/operators that are approaching the annual maximum for funding for single facilities and multiple facilities. During FY 2020-2021, the Program reviewed a total of 209 applications that were submitted by 63 owner/operators. Based

**Program Funding
Section 376.3071(15)(i), F.S.**

A petroleum storage system owner or operator may not receive more than \$200,000 annually for equipment replacement, repair, or preventative measures at any single facility, or \$500,000 annually in aggregate for all facilities owned or operated by the owner or operator it owns or operates.

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

on our review, funding for all owner/operators was allowable. However, several purchase orders were issued to businesses that had the same individual listed as an officer of the company. The Program Administrator advised business entities were considered owners. As such, none exceeded the annual funding cap.

Section 376.3071(15)(j), F.S.: Cost Reimbursement

During FY 2020-2021, 20 applications were reviewed by the Program for reimbursement. Of those, four met the requirement under Section 376.3071(15)(j), F.S. We sampled two of the approved applications for reimbursement to verify all necessary documentation was provided. Based on our review, approved reimbursement applications followed the same procedures developed by the Program for proposed work applications and included all necessary documentation for approval.

**Reimbursement for 2015 - 2019 Repairs
Section 376.3071(15)(j), F.S.**

Owners or operators that have incurred costs for repair, replacement, or other preventative measures as described in this subsection during the period of July 1, 2015, through June 30, 2019, may apply to request payment for such costs from the department using the procedure in paragraphs (b), (c), and (d). The department may not disburse payment for approved applications for such work until all purchase orders for previously approved applications have been paid and unless funds remain available for the fiscal year. Such payment is subject to a deductible of 25 percent of the cost of the scope of work approved by the department under this paragraph.

Controls and Risk

The Program is administered through PCAP, which is responsible for storage tank permitting and compliance. Chapters 62-761 and 62-762, Florida Administrative Code (F.A.C.), establishes requirements for facilities with storage tanks to be subject to periodic inspection. The Department or its contracted County inspectors conduct compliance inspections to verify storage systems are operated and maintained in accordance with rule requirements. Storage tank registration requirements and fees are established in Chapter 62-761.400, F.A.C. Registration renewal fees are assessed annually.

According to the Program Administrator, Program information, awareness, and availability of funding has not been integrated into the PCAP compliance inspection process. According to the Environmental Administrator of storage tank registration and fee collections, the Program has not included Program information to petroleum storage system owners as part of the annual billing process.

CONCLUSION

Based on our review, the Program has established processes to implement 376.3071(15), F.S. for ethanol or biodiesel damage and preventative measures. However, we noted weaknesses in the areas of reasonableness of costs, invoice requirements, and Program implementation.

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

FINDINGS AND RECOMMENDATIONS

Finding 1: Reasonableness of Costs and Invoice Requirements

Reasonableness of Costs

According to Section 376.3071(15)(a)2., F.S., *the department shall review applications for completeness, accuracy, and the reasonableness of costs and scope of work.* While the statute requires the Program to review applications for reasonableness of costs, the Program requires applicants to supply this information.

Of the 128 purchase orders issued through November 24, 2021, 125 (97.5%) included applications with proposals from the same contractor. We reviewed documentation provided for the reasonableness of costs in the applications from the 15 sampled purchase orders. Each application in our sample had the same contractor, with documentation being provided based on the items within the scope of work, such as corrosion abatement, submersible turbine pump (STP) motor replacement, spill bucket replacement, and vapor recovery bucket replacement.

Based on our review, all 15 included the same quotes from the same three contractors for each item within their scopes of work. One quote used for reasonableness of cost was from an approved subcontractor of the contractor under a separate Petroleum Restoration Program (PRP) contract. The assigned contractor also submitted scopes of work for previously completed work by their company as proof of the reasonableness of costs. Scopes of work for the 15 purchase orders generally included the following activities and equipment at unit costs as follows.

Description	Unit Price	Unit
<i>Labor Crew (2 Person)</i>	\$130.00	hours
<i>Truck</i>	\$125.00	per day
<i>Trailer</i>	\$100.00	per day
<i>Per Diem (Hotels & Meals)</i>	\$300.00	per day
<i>Red Jacket Red Armor, 1.5 HP Motor Assembly #4410149</i>	\$2,958.64	each
<i>Red Jacket Leak Detector #116-058-5/058-5</i>	\$206.24	each
<i>Electrical Supplies Stainless</i>	\$1,000.00	estimated
<i>Misc. Fittings Stainless</i>	\$1,000.00	estimated
<i>Emco Wheaton A1005-518GP Spill Bucket</i>	\$737.96	each
<i>OPW71SO Drop Tube</i>	\$589.71	each
<i>Epoxy 2 part Rust Inhibitor Coating Part A</i>	\$219.95	each
<i>Epoxy 2 part Rust Inhibitor Coating Part B</i>	\$168.87	each
<i>4 inch Riser Stainless</i>	\$180.00	each
<i>Mobilization < 100 miles</i>	\$450.00	each
<i>Shipping</i>	\$250.00	estimated

To evaluate the costs for the proposed scopes of work, we reviewed three scopes of work representative of our sample which we compared to the reasonableness of costs

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

documents provided. Based on our review, the costs for equipment were consistent with submitted comparative quotes. However, the proposed amounts for truck, trailer, mobilization, and per diem appeared excessive by comparison. Program management indicated that there had been no independent comparison of costs to similar costs in other Division contracts or from external sources.

Invoice Requirements

Section 376.3071(15)(c)1., F.S., states that, *except for maintenance contracts, the applicant may request that the department make payment following completion of the work authorized by the department, in accordance with the terms of the purchase order. The request must include a sufficient demonstration that the work has been completed in substantial compliance with the purchase order and that the costs have been fully paid.*

The Program has developed deliverables and invoicing requirements. Invoices are required to be provided within 30 days of the completion of work. These invoices must include the following:

- A standardized invoice with all costs listed and the detail of work performed, including specific dates of service/work performed;
- An attestation from the contractor that the work has been completed, including proof of payment; and
- Proof of notification to the Department's contracted County inspectors of work being performed with a minimum of seven days advance notice.

Beyond proof of the owner's payment to the contractor, the Program does not require that the owner demonstrate detailed support for submitted costs and dates of service. Based on our review of the sampled purchase orders, submitted invoices included information consistent with the approved scopes of work.

As a result, the Program lacks an independent review of costs which are reasonable for the repair, replacement or preventative maintenance of petroleum storage systems subject to damage from fuels blended with ethanol or biodiesel. Requiring the owner to submit quotes from contractors to support reasonableness of costs leaves the Program at risk for a biased selection of quotes and inflated prices. In addition, the Program has no mechanism to verify support for the subsequently submitted cost of equipment, supplies, travel, labor, or vehicles.

Recommendation

We recommend the Division work with the Program to establish processes to review and compare costs to multiple independent sources in order to establish a baseline for the reasonableness of Program related costs. In addition, we recommend the Program document this analysis and the resulting determination during the review of applications. To promote accountability of invoiced costs, the Program should also establish invoice requirements which require support documentation for the final cost incurred.

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

Division Response

The Program will work to gather additional cost information from the PSSCs in an effort to develop and maintain a database of typical costs. Examples of the types of information we will request include, but are not limited to:

- Invoices for work performed by the PSSC within the last fiscal year; and
- Itemized breakdown of items such as electrical equipment, shipping, parts, etc.

The Program will also clarify the documentation needed for payment and update instructions on the website. This will include, but may not be limited to:

- Itemized travel expenses for contracted workers onsite,
- Copies of payment records confirming payments to the contractor,
- Copies of rental equipment agreements utilized for invoiced work, and
- Detailed field notes indicating date(s), times, staff present, and any field related equipment (vehicle and trailer) onsite while work was being performed.

Finding 2: Application Review

Section 376.3071(15)(a)2., F.S., states that, *Within 30 days after receipt of an application, the department must approve or deny the application, propose modification to the application, or request additional information.* The Program has developed an application tracking worksheet, which is used for new applications, as well as those resubmitted with additional information. According to the Program's tracking worksheet for the 15 sampled applications, the Program performed 32 reviews for these applications. We requested the documents received and sent by the Program to verify the dates on the application tracking worksheet. Electronic mail correspondence was provided by the Program for applications received, requests for additional information sent, and the issuance of approval orders. However, no correspondence was provided showing the date of completion for the Program's review.

Based on the Program's application tracking worksheet, 19 of the 32 application reviews were approved, denied, or had a request for additional information within 30 days of receipt. However, due to the lack of correspondence or documentation supporting these entries, we could not verify that the reviews were completed within 30 days.

The Program Administrator advised that the completion of the Program's review was not consistently documented outside of the tracking worksheet. Lack of documentation to verify the accuracy of the tracking worksheet and review completion leaves the Program subject to untimely review.

Recommendation

We recommend the Division work with the Program to implement a process to track and support the timely review of applications in order to demonstrate compliance with the requirements for 30-day review completion under Section 376.3071(15)(a)(2), F.S.

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

Division Response

Over the past fiscal year, the Program team has worked to “fine-tune” our tracking system. The Program developed a database that tracks the processing and status of an application and documents the following information:

- Applicant information (name, company name, address, DEP facility ID, address, etc.),
- Application received date/time,
- Application review due date (30 days from receipt). This date is modified, as appropriate, if an RAI is issued,
- Date/Time of RAI,
- Date/Time of Approval/Denial,
- Vendor ID number and profile information Purchase Order issuance date, and
- Invoicing date.

It is the Program’s belief that initial deficiencies in tracking and record-keeping have been resolved.

MANAGEMENT COMMENT

Management Comment: Program Administration

The Program is administered through PCAP, which is responsible for storage tank permitting and compliance. Chapters 62-761 and 62-762, F.A.C., establishes requirements for facilities with storage tanks to be subject to periodic inspection. The Department or its contracted County inspectors conduct compliance inspections to verify storage systems are operated and maintained in accordance with rule requirements. Storage tank registration requirements and fees are established in Chapter 62-761.400, F.A.C. Registration renewal fees are assessed on an annual basis.

According to the Program Administrator, Program information, awareness, and availability of funding has not been integrated into the PCAP compliance inspection process. According to the Environmental Administrator over storage tank registration and fee collections, the Division has not included Program information to storage tank owners as part of the annual storage tank fee billing process. The Program has relied on external contractors to generate owner participation. As a result, one contractor has supplied the majority of information used by the Program to support reasonableness of costs.

Section 376.3071(6)(m), F.S., prohibits a site owner from receiving remuneration from rehabilitation contractors performing site cleanup activities. However, this provision does not include owners approved for funding for ethanol or biodiesel repair or replacement. Since promotion of the Program has been in large part, influenced by contractors, the Program is exposed to a risk of excessive costs and potential for owner remuneration.

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

To promote diversity in contractors participating in the Program, the Division would benefit by increasing communications regarding the Program to petroleum system business owners through its established PCAP compliance inspection process as well as its established annual storage tank fee renewal billing process. Given that Section 376.3071(15), F.S., allows business owners to select their own contractor for the repair, replacement, or preventative maintenance of petroleum storage systems subject to damage from fuels blended with ethanol or biodiesel, the Division would also benefit from establishing policies which specify that Program participant business owners are prohibited from receiving remuneration from contractors.

**Operational Review of the Permitting and Compliance Assistance Program
Ethanol/Biodiesel Program
Department of Environmental Protection**

APPENDIX A - SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of this review included established processes to implement section 376.3071(15), F.S., and purchase orders issued through the Program.

The objectives were to:

- Determine whether the Division has established the Program in a manner consistent with Section 376.3071(15), F.S.
- Evaluate Division controls and risk associated within the Program.

To achieve our audit objectives, our methodology included:

- Reviewing Section 376.3071(15), F.S., and internal operating procedures;
- Reviewing purchase orders, approved invoices, and payments;
- Interviewing appropriate Department staff and management regarding the processes and controls used by the Program.

STATEMENT OF ACCORDANCE

Statement of Accordance

The Mission of the OIG is to promote accountability, integrity, and efficiency by providing quality audits, investigations, management reviews, and technical assistance.

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the *Principles and Standards for Offices of Inspectors General* as published by the Association of Inspectors General and the *International Standards for the Professional Practice of Internal Auditing*, as published by the Institute of Internal Auditors, Inc. The audit was conducted by Sarah Beal and supervised by Valerie J. Peacock.

This report and other reports prepared by the OIG can be obtained through the Department's Website at <https://floridadep.gov/oig> or by contacting:

Office of Ombudsman and Public Services
public.services@floridadep.gov
(850) 245-2118

Candie M. Fuller,
Inspector General