



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
September 2, 2009

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General determined that New York State Department of Environmental Conservation (DEC) Administrative Assistant Leslie Woolsey used a DEC vehicle exclusively to commute to work from her residence in Staten Island to her official duty station in Long Island City for at least five years, in violation of agency policy. Woolsey drove the agency vehicle approximately 21 miles both to and from work, an estimated 900 miles per month (54,000 miles total usage). Furthermore, Woolsey used a state-issued gas card to purchase gas and a state-issued EZ pass for tolls. It is estimated that her gas usage cost New York State a minimum of \$2,000 and her EZ pass usage a minimum of \$6,000. Woolsey also did not complete required mileage logs, nor did she report her use of the vehicle as taxable income as required by federal law.

Woolsey was first permitted use of the vehicle under the supervision of then-Regional Operations Supervisor Gary St. Clair; although St. Clair, now retired, disavows responsibility for the decision. At the time, St. Clair was Woolsey's direct supervisor, and was responsible for maintenance and assignment of vehicles. The arrangement continued under current Regional Operations Supervisor Robert McDonald, who knew of the impropriety but allowed it to continue.

The Inspector General recommends that DEC ensure that staff are utilizing state vehicles appropriately and are accurately recording commuting use as required by the Internal Revenue Service. Supervisors should review and approve all mileage reports.

The Inspector General further recommends that DEC review Woolsey's conduct, and take action as appropriate against Regional Operations Supervisor McDonald for permitting Woolsey to continue improper use of a state vehicle for commuting. The Inspector General is also referring this matter to the New York State Department of Taxation and Finance for review of Woolsey's taxable income for receiving this unreported fringe benefit.

DEC advised the Inspector General that it has referred Woolsey's and McDonald's conduct to its Office of Employee Relations for appropriate disciplinary action. It also advised that it is implementing the Inspector General's recommendations

to strengthen agency control over vehicle usage and ensure that employees comply with vehicle use policies.

ALLEGATION

In May 2008, the Inspector General received an allegation that Leslie Woolsey improperly used a state vehicle, a state EZ Pass, and a state gas card to commute between her residence and her work location for nine years. The complainant further alleged that Robert McDonald, who supervises the region's vehicle fleet, allowed Woolsey to use a vehicle as a reward for facilitating his rapid promotion to Regional Operations Supervisor.

SUMMARY OF INVESTIGATION

Background

The New York State Department of Environmental Conservation (DEC) is responsible for safeguarding New York State's natural resources and environment, and preventing the pollution of the state's water, land and air. The agency employs about 3,500 staff members, owns more than 2,000 vehicles, and consumes more than 1 million gallons of fuel per year. DEC has designated nine regions within the state. Region 2 covers the five boroughs of New York City. The Region 2 office is located in Long Island City, New York, and oversees various environmental issues in New York City. Regional Director Suzanne Mattei has supervised DEC Region 2 since 2007.

Region 2 Regional Operations Supervisor Robert McDonald has been employed by DEC for the past eight years and assumed his current position following the retirement of former Regional Operations Supervisor Gary St. Clair in 2006. As Regional Operations Supervisor, McDonald is responsible for maintenance and assignment of a fleet of approximately 110 vehicles in Region 2, some of which are assigned to specific individuals and others that are used as "pool" vehicles on an as-needed basis.

Leslie Woolsey has been employed as Region 2's administrative assistant for the past nine years. Woolsey's duties include arranging for employee-applicant interviews, addressing human resource issues, administering employee benefits, assisting the Regional Director, processing paperwork related to promotions, and supervising all clerks. Woolsey reported directly to St. Clair until his retirement in 2006; at that time, Woolsey began reporting to the regional director.

DEC Vehicle Policy and the Federal Tax Code

According to DEC's vehicle use policy, dated March 4, 1999 and revised as of December 23, 2003, vehicles are assigned to the "Commissioner, Regional Directors, members of the Divisions of Law Enforcement, Forest Protection/Fire Management, Spill Response personnel, and Air Quality Surveillance personnel when the full time use of a vehicle is required to carry out their official duties." In addition, "assignment of a vehicle is permitted to employees whose reoccurring official duties required traveling more than 5,000 miles per year and use of a vehicle is needed three or more days a week" or for an employee "who is engaged in full time field work activities." All requests for

an assignment of a vehicle or for temporary use of a pool vehicle are made to the Regional Operations Supervisor.

The policy states that state vehicles “will be used for official State business only,” except that the Commissioner may have unrestricted use. The policy also notes that managers, supervisors, and employees are all accountable to ensure the vehicles are used properly and that misuse of a vehicle may lead to disciplinary action. All vehicles must reside at one of DEC’s official facilities with the following exceptions: the Commissioner and Regional Directors, employees whose residence is their official workstation, employees who are on call and have Regional Director’s approval, or in situations where management determines field work is more efficiently carried out by transporting employees to and from work locations.

Each vehicle has a monthly mileage log on which the driver is instructed to record the employee name, the daily ending mileage and an activity code that describes why the vehicle was used. Supervisors do not sign or approve mileage reports. Although federal guidelines require documentation separating commuting use and official use for tax purposes, the log does not include space for staff to so differentiate. At the end of each month, the logs are submitted to the Regional Operations Supervisor.

Section 62(a) of the Internal Revenue Code provides that taxpayers must report income from any source, including fringe benefits such as personal or commuting use of an employer-owned vehicle. Fringe benefits must be included in the employee’s wages and reported on Form W-2. According to IRS guidelines, employees must keep records that differentiate between personal and business use of employer-owned vehicles. Absent such records, any use that is not documented as business use is considered personal, taxable income. IRS guidelines further provide that it is “the employer’s responsibility to determine the actual value of this fringe benefit [personal or commuting use of a vehicle] and to include the taxable portion in the employee’s income.”

The New York State Comptroller’s Payroll Services Division annually distributes a Payroll Bulletin discussing state employees’ responsibilities regarding taxable fringe benefits. The Payroll Services Division also provides a form to all agencies, for distribution to employees, requesting employees to calculate and report a “Taxable Value of Personal Use of Employer Provided Vehicle.” The amount reported on the form is incorporated in the employee’s Form W-2.

For the past few years, DEC’s payroll department also has sent an annual e-mail to all DEC employees reminding them of their responsibility to report taxable fringe benefits. Previously, staff was provided the same notice in a paper bulletin inserted with employee paychecks or pay stubs.

Woolsey’s Use of State Vehicle for Commuting

Under DEC policy, Woolsey did not qualify to be assigned a state vehicle in which to commute. Yet, while she had no legitimate business justifying use of a vehicle, Woolsey was permitted to commute in a state vehicle for approximately five years. Woolsey admitted that she used a state vehicle for about a five-year period to commute to and from her Staten Island home, approximately 21 miles each way. In addition, she

used a state EZ-Pass for tolls and a state gas card to fuel the vehicle. Woolsey told the Inspector General that her vehicle use commenced shortly after September 11, 2001, although she could not recall the exact date she started or stopped using a state vehicle. She explained that after September 11, 2001, Gary St. Clair, her supervisor at the time, suggested and encouraged her and other staff to use state vehicles to commute because they were spending long hours working with other units within DEC and with law enforcement regarding the World Trade Center attacks. However, once Woolsey's work schedule returned to normal, she continued to use the vehicle for commuting. She recalled that she stopped using the vehicle on a daily basis a few years ago, but did note that, until the Inspector General's investigation, she still used a car periodically to commute. She stated that, approximately two years ago, she first learned that vehicles should not be used exclusively for commuting.

Woolsey's Vehicle Mileage Reports and Report of Taxable Value

Also in violation of DEC policy, Woolsey submitted incomplete mileage reports, and submitted them inconsistently. The Inspector General reviewed all available mileage reports for the approximately 110 vehicles in the region for January 2003 through July 2008 to attempt to identify and quantify Woolsey's usage. Many reports were missing or incomplete. Woolsey stated that she was instructed by St. Clair to only list the starting and ending mileage for the month. Reports indicating use by Woolsey were only available for three months in 2003, two months in 2004, four months in 2005, and one month in 2007, although, according to her own testimony, she used the vehicle consistently beginning in late 2001 until approximately the beginning of 2006, when St. Clair retired. Based on Woolsey's testimony and limited documentation, the Inspector General estimates Woolsey drove the state vehicle approximately 900 miles per month commuting between her home in Staten Island and her Long Island City workstation. Using this monthly approximation for a period beginning October 2001 until December 31, 2005, the Inspector General estimates that Woolsey charged a minimum of \$2,000 to state-issued gas cards.¹

Woolsey informed the Inspector General that she used a state EZ Pass when commuting in her state vehicle between Staten Island and Long Island City. The vehicle route between Woolsey's workstation in Long Island City and her home in Staten Island includes the toll-bearing Verrazano Bridge. As with its mileage reports, DEC's records of Woolsey's EZ Pass usage are inadequate. DEC did not maintain records indicating which EZ Pass was assigned to which vehicle, or whether Woolsey used the same EZ Pass during the entire period she commuted in a state car. However, based on Woolsey's testimony regarding her use of the DEC vehicle and the tolls in effect during that period, the Inspector General estimates that DEC incurred charges of at least \$6,000 for tolls between 2001 and 2005 for Woolsey's commute.

¹ The Inspector General arrived at the \$2,000 minimum in gas charges incurred using calculations most favorable to Woolsey. Because she testified to using the car consistently for commuting from after September 11, 2001 until St. Clair's retirement, the Inspector General calculated gas charges commencing October 1, 2001 and ending December 31, 2005 even though St. Clair retired in the beginning of 2006. The Inspector General also did not include any usage in 2006 through 2008 because she characterized her usage as "intermittent" which was difficult to quantify in the absence of sufficient documentation.

Despite the Comptroller's annual bulletin and distribution of forms and DEC's annual notice to employees regarding taxable fringe benefits, Woolsey claimed she was never instructed that commuting mileage is reportable as taxable income. Woolsey never submitted the required form to the Comptroller reporting the taxable value of her commuting benefit. Based on the Inspector General's conservative estimates, Woolsey's unreported taxable fringe benefits amount to a minimum of \$2,500.

Regional Operations Supervisor Knowledge and Approval of Woolsey's Improper Vehicle Use

Former Regional Operations Supervisor Gary St. Clair admitted that he knew Woolsey used a state vehicle to commute to and from work during his tenure, but stated that he did not know when she started using it, the extent of her use or when she stopped using it. Although Woolsey stated that St. Clair originally authorized her to use the car, St. Clair stated that he could not recall who gave Woolsey permission to use a vehicle. He stated that many employees in Region 2 used state vehicles to commute following 9/11 because they worked late hours and experienced problems with public transportation. He also was aware that Woolsey only reported the beginning and ending mileage each month, as did most of the staff.

McDonald succeeded St. Clair in 2006 as Regional Operations Director. He testified that he had been aware of Woolsey's use of the vehicle since 2001, and was aware that Woolsey did not correctly or fully complete vehicle mileage reports. McDonald stated that he never questioned Woolsey's use of the vehicle, or her failure to accurately complete vehicle mileage reports, nor did he bring the matter to the attention of the regional director or anyone else. McDonald stated that Woolsey continued to use a pool vehicle about once a week until approximately August 2008. McDonald was aware that Woolsey should not have been using a state vehicle because she does not conduct fieldwork, but that he does not believe that DEC's central office was aware of the arrangement. McDonald stated he believes it is the employee's responsibility to meet the IRS requirements for reporting commuting mileage as taxable income and to forward the proper documentation annually to DEC's central office in Albany.

McDonald testified that he was required to enter the data from the mileage logs into a database, including the starting and ending mileage and codes indicating the purpose of the vehicle's use. McDonald admitted, beginning in 2006, that he recorded Woolsey's use of the vehicle as attributable to "regional administration," which he knew was incorrect as she used the vehicle solely for commuting.

Suzanne Mattei became the DEC Region 2 Regional Director in May 2007. She stated that she was unaware that Woolsey used a state vehicle until McDonald informed her in mid-2008, during the Inspector General's investigation into the matter. When Mattei learned of the improper arrangement, she confronted Woolsey about her state vehicle use and was told by Woolsey that she had ceased using a DEC vehicle. Mattei believed that St. Clair originally authorized Woolsey's vehicle usage when he was the Regional Operations Supervisor.

McDonald's Promotion to Regional Operations Supervisor

The Inspector General did not substantiate the allegation that McDonald permitted Woolsey to use a vehicle in exchange for her facilitation of McDonald's promotion to Regional Operations Supervisor in 2006. Woolsey, in her role as an administrative assistant, is responsible for completing promotional paperwork for staff, but has no other involvement in the promotional process. Mattei stated that Woolsey does not have the authority to recommend McDonald for a promotion. According to Mattei, McDonald was chosen because he was one of only two full-time employees in the Operations Department at the time of St. Clair's retirement.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that, in violation of DEC policy, Leslie Woolsey used a state vehicle to commute from her residence in Staten Island, New York, to her Region 2 official duty station in Long Island City, New York, for at least five years. The Inspector General estimates that Woolsey drove, between 2001 and 2005, approximately 900 miles per month, although her formal mileage records were incomplete and many were missing altogether. Because DEC gas card and EZ pass records were wholly incomplete, the Inspector General was forced to estimate Woolsey's usage. The Inspector General estimates that the state incurred a minimum of \$2,000 in gas charges and a minimum of \$6,000 in tolls for commuting. The current and past Regional Operations Directors, who oversee Region 2's vehicles, both knew of Woolsey's use of a state vehicle and explicitly or tacitly approved of the arrangement. Neither would take responsibility for allowing Woolsey to commute, despite having authority over vehicle assignments.

The Inspector General recommends that DEC ensure that employees are documenting commuting mileage as required by the IRS. Supervisors should review and approve all mileage reports and ensure that employees are using vehicles only as authorized by agency policy. DEC should ensure that employees who are permitted to commute in agency vehicles complete and return to the Comptroller the required form reporting annual taxable value of commuting use of state vehicle.

The Inspector General recommends that DEC review Woolsey's conduct, and take action as it deems appropriate regarding McDonald, who knew of Woolsey's violation of agency policy but took no steps to discontinue the practice. McDonald also did not require Woolsey or any other employee to complete accurate mileage reports. Most troubling, McDonald, beginning in 2006, improperly recorded Woolsey's use of the vehicle as attributable to "regional administration."

The Inspector General is also forwarding a copy of this report to the New York State Department of Taxation and Finance for a determination of whether Woolsey has additional tax liability.

During the course of the Inspector General's investigation, the agency's internal audit department began a review of DEC's vehicle usage across the state, excluding Region 2, and recently issued a draft report on the matter. The draft recommendations include better controls over assigned vehicles, ensuring that assignments are in accordance with vehicle policy, and ensuring that commuting is allowed only when

reasonable. Other recommendations include revising vehicle mileage records to include commuting use and ensuring employees are reporting taxable income as required by IRS.

Response of the Department of Environmental Conservation

DEC advised the Inspector General that it has referred Woolsey's and McDonald's conduct to its Office of Employee Relations for appropriate disciplinary action.

It also advised that it is implementing the Inspector General's recommendations to strengthen agency control over vehicle usage and ensure that employees comply with vehicle use policies. The corrective actions include:

- Requiring supervisory review and approval of monthly mileage reports;
- Ensuring that DEC employees who are permitted to commute report the fringe benefit value of the personal use of the vehicle;
- Changing vehicle reporting forms to improve DEC's ability to track and verify the appropriateness of agency vehicle use.