



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**FOLLOW-UP TO OFFICE OF  
POLICY ANALYSIS REPORT,  
“REVIEW OF SELECTIVE ASPECTS OF  
THE FEDERAL HELIUM PROGRAM,”  
JUNE 2010**



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

OCT 18 2010

To: Robert Abbey  
Director, Bureau of Land Management

From: Mary L. Kendall *Mary L. Kendall*  
Acting Inspector General

Subject: Follow-up to Office of Policy Analysis Report, "Review of Selective Aspects of the Federal Helium Program," June 2010 (Report No. WR-IN-BLM-0003-2010)

At the request of the Bureau of Land Management (BLM), the Department of the Interior's Office of Policy Analysis (PPA) recently completed an independent review of BLM's Helium Program. The BLM asked that this review focus primarily on the recommendations contained in the August 2008 Office of Inspector General (OIG) report, "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program" (Report No. WR-IV-BLM-0003-2008/OI-CO-07-0206-I).

In light of the current Congressional consideration being given to the continuation of the program as it operates now or to modify BLM's role, BLM should make the necessary changes to improve the transparency and accountability of the Helium Program. Continuing on the current course will only perpetuate the opportunities for fraud, waste, and mismanagement. BLM has the opportunity now to address Helium Program issues identified by the PPA and OIG.

Please provide us with your written response to this report, number WR-IN-BLM-0003-2010, within 30 days. The BLM response should provide information on actions taken or planned to address our five recommendations, target dates, and titles of the officials responsible for implementation. Please address your response to:

Ms. Kimberly Elmore  
Assistant Inspector General for Audits, Inspections, and Evaluations  
U.S. Department of the Interior  
Office of Inspector General  
1849 C Street, NW, MS 4428  
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If you have any questions regarding this memorandum or the subject report, please do not hesitate to contact me at 202-208-5745.

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## Results in Brief

In June 2010, the Department of the Interior's Assistant Secretary for Policy, Management, and Budget, Office of Policy Analysis (PPA) issued its report, "Review of Selective Aspects of the Federal Helium Program." This report included recommendations relating to the issues discussed in the August 2008 Office of Inspector General (OIG) report entitled "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program" (Report No. WR-IV-BLM-0003-2008/OI-CO-07-0206-I). The PPA report found that Bureau of Land Management (BLM) did not use Federal funds to pay for certain equipment costs for the Helium Program, used standard cost allocation methodologies in the cooperative agreements, failed to clearly document or explain certain arrangements with the helium refiners, and did not delineate or track the use of major maintenance funds. The PPA report also presented the opinion that the investment fee paid by the BLM was not excessive. Based on the PPA report and BLM's planned actions, we made five recommendations to improve the program.

Our 2008 report found that BLM used cooperative agreements on the Helium Program when procurement contracts would have been more appropriate. PPA was not asked to review this issue, and we are not making additional recommendations on the use of cooperative agreements at this time. We are instead hopeful that implementation of the planned BLM actions will improve oversight of the Helium Program.

Major actions required by law will expire in 2015. Currently, there is considerable interest by legislators, Federal entities, and private producers to review the future needs for helium and to determine the necessary role BLM may have in the operations of the Helium Program. Thus, it is all the more critical that BLM make the necessary changes to the program now in order to improve the transparency and accountability of the Helium Program for the future. Continuing on the current course will only perpetuate the opportunities for waste, fraud, and mismanagement and BLM has the opportunity now to address Helium Program issues discussed in PPA and OIG reports.

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# Introduction

## Objective, Scope, and Methodology

Our objective was to evaluate the Department of the Interior's Assistant Secretary for Policy, Management, and Budget, Office of Policy Analysis (PPA) findings and recommendations regarding the Bureau of Land Management's (BLM) Helium Program and the actions planned by BLM in response to our August 2008 report on the program. Although our original intent was to perform a complete audit of the helium contracting process, in light of the work done by the PPA, we did not believe a full audit was necessary. Instead, we limited our review to the above stated objective. We performed our work in accordance with Quality Standards for Inspections adopted by the Council of the Inspectors General on Integrity and Efficiency.

## Background

The Federal Helium Program was created in 1925 to ensure adequate supplies of helium to the U.S. Government. BLM took over responsibilities for the Helium Program when the Bureau of Mines was closed in 1996. In 1996, the Helium Privatization Act (Act) was created and required BLM to cease federal helium refining and sell off a stated amount of stored federal helium by 2015. The Act allows BLM to continue storing and transporting helium and evaluating the Nation's helium resources. In carrying out its responsibilities, BLM works closely with individual helium extractors and refiners as well as a group of refiners organized as the Cliffside Refiners Limited Partnership (CRLP). BLM entered into a series of cooperative agreements with CRLP for the construction and operation of the Crude Helium Enrichment Unit (CHEU) and the Crude Helium Compression Station (CHCS).

In 2008, a joint review was conducted by the Office of Inspector General's (OIG) Office of Audits, Inspections and Evaluations and the Office of Investigations in response to a hotline complaint. Our report, "Immediate Action Needed to Stop the Inappropriate Use of Cooperative Agreements in BLM's Helium Program" (Report No. WR-IV-BLM-0003-2008/OI-CO-07-0206-I), identified less than arms-length transactions between managers of the Amarillo Field Office and the refiners, a lack of oversight by BLM's New Mexico State Office, overcharging on the CHEU cooperative agreement, possible double billing for major maintenance, short-term financing caused by a complex billing process, and the unjustified allocation of costs to construct and operate the CHEU.

In response to the report, BLM hired a contractor "to provide an independent review of its Helium Program" and incorporated the contractor's report in its May 2009 response to our report. Unfortunately, the OIG found that BLM formed a less-than-arms-length relationship with this contractor, which resulted in the suspension of this contractor. BLM then asked PPA to conduct an independent

review of the Helium Program with a primary focus on the recommendations contained in the August 2008 OIG report. PPA issued its report in June 2010.

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## Findings

### Equipment Costs Not Funded with Federal Funds

Our 2008 report questioned why the CHEU was funded by CRLP rather than by BLM helium operations money. The investment fee that BLM agreed to pay CRLP more than doubled the cost of the CHEU, and there was more than enough money in BLM's helium operations fund to cover the initial cost. The PPA analysis agreed that there was no documented reason that BLM could not have provided the initial capital costs for construction of the CHEU and stated that for future acquisitions, this approach should be considered. PPA concluded that the CHEU's primary purpose is for transporting and maintaining the purity of crude helium, which would fall under Section 4(c)(5) of the Helium Privatization Act. In other words, the acquisition of this equipment falls within the purview of BLM mission related work and should be funded and owned accordingly.

#### Recommendation

- I. Evaluate whether BLM should provide capital costs for new equipment and facilities that fall under Section 4(c)(5) of the Helium Privatization Act. Any such equipment should be purchased with program funds in the future or adequately justified.

### Standard Cost Allocation Methodologies Not Used

Our 2008 report questioned the seemingly unjust allocation of the CHEU costs, which stated that BLM agreed to pay 80 percent of the CHEU operating costs, but did not intend to adjust the ratio of costs it would pay during the life of the CHEU. The PPA report discussed the complex cost sharing arrangements of the cooperative agreements as well as various methodologies commonly used to allocate costs. The PPA report concluded that the cooperative agreements did not appear to use any of the standard methodologies PPA identified. It also confirmed that the cost allocation of the CHEU has not been revisited since the CHEU cooperative agreement was signed in 2001. The report clarified that the physical ratio of gases in the Cliffside reservoir was approximately 20 percent helium and 80 percent other gases in 2001, and that the ownership proportions of the resources have changed since that time. PPA recommended, and we concur, that the BLM revisit this issue and consider using other allocation methods that represent the actual benefits derived from the use of the equipment.

### Recommendation

2. Reexamine the existing cost allocation and evaluate other approaches for cost allocation as the end of the term of the CHEU and associated agreements approaches. If additional capital investments are to be made to maintain the operational integrity of the Cliffside Reservoir, pipeline, and other facilities, careful and systematic consideration should be given to evaluating cost allocation issues.

## Complex Billing Process Lacks Transparency

Our 2008 report discussed the complex billing process in CHCS cooperative agreement, which allowed CRLP to use Federal funds as a short-term financing vehicle. The PPA report observed that the analysis done by BLM's contractor appears to satisfactorily address this issue, which had stated that short-term financing was occurring, but was insignificant in value. We do not disagree with this specific example. The concept of transparent billing practices, however, is more important than the specific dollars lost and should be carefully reviewed. Beyond referencing the work done by its contractor, the BLM's May 2009 response to our report stated that it would "institute a billing methodology that eliminates the delayed billing for natural gas used in operations." We agree that improved transparency is crucial because of the close relationship between BLM and the Helium Program refiners.

### Recommendation

3. Ensure that the arrangements with CRLP and refiners are transparent and easily explainable, including cost rates and billing processes.

## Use of Maintenance Funds Unclear

Our 2008 report discussed the possibility of double billings under the major maintenance category of the cooperative agreements. In response to our report's recommendation to "perform a thorough review of all agreement costs paid to determine allowability and appropriateness," BLM hired a contractor to review the Helium Program and reported that this recommendation was implemented upon completion of the contractor's review in November 2008. The contractor did not, however, thoroughly review the appropriateness of costs charged against the cooperative agreements. The contractor's report compared only the operating budgets and cost allocations against the stipulations of the cooperative agreements. Further, the contractor's report cited no commonly accepted guidelines, principles, or standards such as the "Government Auditing Standards" promulgated by the Comptroller General of the United States, or auditing standards promulgated by the American Institute of Certified Public Accountants. Rather than seriously looking into the matters raised by our report, including



determining the allowability and appropriateness of agreement costs, it appears that BLM hired the contractor to rebut the details of our report.

Although the PPA review did not reveal any clear situations of double billing, they concluded that BLM is not fully aware of how CRLP manages funds for major maintenance and that the definition of routine and major maintenance in the cooperative agreement could be more clearly articulated to enhance transparency. Beyond citing the work done by its contractor, BLM stated in its May 2009 response that it would “establish and fill a financial management position with an accountant to assist Field Office officials in financial decisions, review financial issues and proposals, and counsel the Field Manager on financial matters.” BLM’s promised action, coupled with the actions recommended by the PPA, should help assure that the costs paid to CRLP are allowable and appropriate.

#### **Recommendation**

4. Create clear definitions for routine and major maintenance and clear delineation for when funds should be used. Develop a system to track major maintenance funds provided to CRLP to ensure that funds are being used in a way that is consistent with the cooperative agreements. In addition, a thorough review of all costs paid to date should occur to verify that all funds have been accounted for and appropriately spent.

### **Questionable Investment Fee**

PPA concluded that the investment fee paid to CRLP for developing the CHEU was “not excessive” when compared to the 7 percent discount rate discussed in the Office of Management and Budget (OMB) Circular A-94. PPA’s rationale was that “the CRLP should be indifferent between receiving the agreed upon investment fee for 15 years or investing the present value of the stream of investment fee payments and earning 7.45 percent.” While the OMB Circular lists this 7 percent rate for financial investments, this transaction is more appropriately akin to a lease-purchase arrangement governed by Treasury rates, which historically have been much lower than investment rates. While private industry may make decisions based on pure monetary basis, the government has a fiscal responsibility to be conservative in its approach to expenditures. Thus, we do not believe the manner in which the profit fee was calculated was appropriate for this situation.

Regardless, the calculation of what is “acceptable” interest assumes that a profit is in accordance with cost regulations. This is not the case. Profit is a normal part of contracts, but the purpose of contracts is to conduct business which assumes the inclusion of profit. As cooperative agreements are designed to benefit the public, and not be used to fulfill mission requirements, the concept of profit is inconsistent with the use of these agreements.

BLM stated in its May 2009 response that cooperative agreements were used so CRLP would assume the risks and potential liability associated with designing and implementing the facilities. The PPA report, however, stated that “BLM assumed all risk of loss or damage to the CHEU during the term of the agreement. Thus, it appears that the level of risk accepted by CRLP for the construction of the CHEU and for bringing the equipment up to operational capacity was relatively low, and it was not clear if the expected cost of the risks that might have been assumed by BLM were ever estimated.” We agree that the payment of these costs has not been justified. We understand the position of PPA, but we continue to disagree with paying the private refiners a profit under these agreements.

#### **Recommendation**

5. Reexamine the reasonableness of the CHEU investment fee, given the expected risk and liability assumed by CRLP, and the appropriate guidance provided by OMB Circular A-94. All excessive payments should be reevaluated and suspended. Any future agreements created for the continuance of mission-related work should not include a profit measure.

### **Questionable Use of Cooperative Agreements**

Our 2008 report discussed the improper use of cooperative agreements to construct and operate new helium facilities. The use of cooperative agreements is not unique to BLM; we also reported in 2007 that the Department of the Interior has relied on cooperative agreements in situations where procurement contracts would have been more appropriate. BLM did not ask PPA to review whether the use of cooperative agreements for the Helium Program was appropriate. In its May 2009 response to our report, the BLM referred to a Solicitor’s Office legal analysis which “reveals that there is no basis to conclude that the relevant statutory or regulatory authorities require use of contracts.” While we continue to be concerned with the use of cooperative agreements as streamlined contracts, our overarching concern is safeguarding against fraud, waste, and mismanagement. In its May 2009 response to our report, BLM said it would:

- Provide written documentation to the BLM Director identifying specific actions taken to increase and strengthen the management oversight of the Helium Program.
- Establish a technical program lead within the New Mexico State Office to provide budget and policy oversight for the helium operation in the Amarillo Field Office.
- Strengthen BLM’s Acquisition Management Review process by requiring reviewers to conduct adequate research, document the basis for their findings, and thoroughly explain in writing what is incorrect, why it is incorrect, and what the appropriate action should have been.

The first two actions were planned to “eliminate the perception of inadequate oversight” on the part of the BLM’s New Mexico State Office and Division of Fluid Minerals. The third action was planned because an Acquisition Management Review stated that “the undersigned remains unconvinced” that the use of cooperative agreements was appropriate in these cases. While BLM did not, in our view, seriously consider our concerns with the use of the cooperative agreements, the planned actions should improve oversight of the Helium Program, have a positive effect on program accountability, and reduce the chance that similar problems will occur in the future.

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## Conclusion and Recommendations

Because we continue to be concerned about the risk of fraud, waste, and mismanagement, we are making recommendations below based on the PPA's report and our previous work. Implementation of these recommendations should improve transparency and accountability in the Helium Program.

### Recommendations

We recommend that BLM:

1. Evaluate whether BLM should provide capital costs for new equipment and facilities that fall under Section 4(c)(5) of the Helium Privatization Act. Any such equipment should be purchased with program funds in the future or adequately justified.
2. Reexamine the existing cost allocation and evaluate other approaches for cost allocation as the end of the term of the CHEU and associated agreements approaches. If additional capital investments are to be made to maintain the operational integrity of the Cliffside Reservoir, pipeline, and other facilities, careful and systematic consideration should be given to evaluating cost allocation issues.
3. Ensure that the arrangements with CRLP and refiners are transparent and easily explainable, including cost rates and billing processes.
4. Create clear definitions for routine and major maintenance and clear delineation for when funds should be used. Develop a system to track major maintenance funds provided to CRLP to ensure that funds are being used in a way that is consistent with the cooperative agreements. In addition, a thorough review of all costs paid to date should occur to verify that all funds to date have been accounted for and appropriately spent.
5. Reexamine the reasonableness of the CHEU investment fee, given the expected risk and liability assumed by CRLP, and the appropriate guidance provided by OMB Circular A-94. All excessive payments should be reevaluated and suspended. Any future agreements created for the continuance of mission-related work should not include a profit measure.

## **Report Fraud, Waste, and Mismanagement**



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