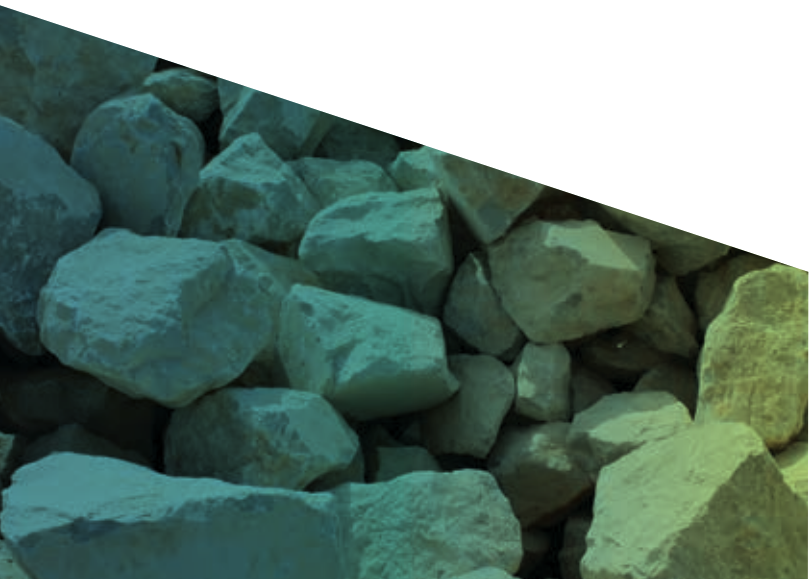
Auditor General
MANITOBA

Report to the Legislative Assembly

Quarry Rehabilitation Program Investigation

Independent Investigation Report

Website Version



May 2020

This page is intentionally left blank.

Website Version

Auditor General
MANITOBA

May 2020

The Honourable Myrna Driedger
Speaker of the House
Room 244, Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

Honourable Ms. Driedger:

It is an honour to submit my report titled, *Quarry Rehabilitation Program Investigation*, to be laid before Members of the Legislative Assembly in accordance with the provisions of Section 28 of *The Auditor General Act*.

Respectfully submitted,

Original Signed by:
Tyson Shtykalo

Tyson Shtykalo, CPA, CA
Deputy Auditor General

Office: 204. 945.3790 | 500-330 Portage Avenue | Winnipeg, Manitoba R3C 0C4 | oag.mb.ca

Website Version

This page is intentionally left blank.

Website Version

Table of Contents

Deputy Auditor General's comments 1

Report highlights 3

Response from the Department of Agriculture and Resource Development 5

Special audit request 7

Background 9

Scope and approach 11

Findings and recommendations 13

1 Weak internal controls and management of the Quarry Rehabilitation Program 13

1.1 Insufficient risk management processes 13
1.2 Weak controls over levy collection and royalty revenue 15
1.3 Tendering practices not followed 17
1.4 Inspectors involved in too many aspects of the Program 18
1.5 Administration cost recovery from fund not supported 19
1.6 File documentation standards not followed 20
1.7 Inadequate use of technology 21
1.8 Contracts over $10,000 not disclosed on proactive disclosure site 22
1.9 Reporting framework requires improvement 23

Website Version

This page is intentionally left blank.

Website Version

Deputy Auditor General's comments

Section 16 of *The Auditor General Act* states that the Lieutenant Governor in Council, Minister of Finance, or the Public Accounts Committee can request a special audit of the accounts of a government organization, recipient of public money or other person or entity that in any way receives, pays or accounts for public money. I encourage these requests as they help to prioritize audits of concern to Members of the Legislative Assembly. In the history of the Auditor General's Office, these requests have typically been accepted and acted upon.

My office received and accepted a special audit request from the Minister of Finance after Internal Audit and Consulting Services and the Department responsible raised concerns with the Quarry Rehabilitation Program. The request included that we conduct our investigation on an expedited basis. This resulted in forensic team members meeting with Department and Government officials, keeping them informed of findings and next steps on a regular basis.

Section 16(3) states the Auditor General may submit a report of an audit under this section to the Assembly if it is in the public interest to do so. Given potential legal consequences related to the allegations we will not publicly report on certain findings. However, I have deemed that it is in the public interest to share our systemic findings. Weak oversight and poor internal controls resulted in mismanagement of the Quarry Rehabilitation Program. This investigation demonstrates the vital importance of robust management and strong internal controls.

I would like to thank the Department of Agriculture and Resource Development and the Department of Finance for their assistance during this investigation.

Original Signed by:
Tyson Shtykalo

Tyson Shtykalo, CPA, CA
Deputy Auditor General

Website Version

Website Version

Quarry Rehabilitation Program Investigation

1992 Quarry Rehabilitation Program established

Collects $ from quarry operators to rehabilitate depleted pits

$5.2 million fund value

2018 program suspended

Special audit request:

2019 – Minister of Finance requested forensic examination, under Section 16(1) of *Auditor General Act*.

Looked at irregularities in financial management of the program

Our investigation resulted in 2 reports:

Report to Legislature

WE FOUND:

- Weak oversight of program
- Poor internal controls

15 recommendations made

Report to Government

Findings related to allegations made directly to government

Confidential due to potential legal consequences

Website Version

Website version

Response from the Department of Agriculture and Resource Development

In the spring of 2018, new senior management of the Department discovered potentially serious financial irregularities and suspended the Quarry Rehabilitation Program. The department then identified these concerns to Internal Audit and Consulting Services and based on their preliminary findings, the matter was further elevated to the Office of the Auditor General for a forensic investigation. The department appreciates the diligence and thoroughness the OAG dedicated towards this requested audit.

This is to confirm that the program remains in suspension. The department will be embarking on a zero-based review of the program to ensure quarries and pits are rehabilitated in an effective and responsible manner. As we fundamentally change and redesign the program, we will give serious considerations to the recommendations.

Website Version

Website version

Special audit request

On March 12, 2019 we received a special audit request under Section 16(1) of *The Auditor General Act.* The Minister of Finance requested that we conduct a forensic examination of the irregularities in the financial management of the Quarry Rehabilitation Program.

Section 16(2) of the Act states that the Auditor General must report the findings of an audit performed under 16(1) to the person or body that requested the audit and to the Minister responsible for any government organization concerned. We received allegations, conducted a forensic investigation, and provided a findings report to the Department and Government officials. Given potential legal consequences we will not report on certain findings as it is not in the public interest to do so.

During the course of our investigation, other matters came to our attention and we will discuss these matters throughout this report. This report is made public under Section 16(3) of the Act, which allows us to share findings when it is in the public interest to do so.

Website Version

Web-site Version

Background

In 1992, *The Mines and Minerals Act* established the Quarry Rehabilitation Reserve Account to collect quarry rehabilitation levy deposits from operators of aggregate quarries. The levy was initially established at 10 cents per tonne of aggregate produced and was increased to 12 cents per tonne in 2012. The levy is set aside in a dedicated fund to be used to rehabilitate depleted pits and quarries throughout the province. The Quarry Rehabilitation Program (the Program) receives applications for rehabilitation of depleted pits/quarries from landowners, approves the application, and makes payments to contractors out of the Quarry Rehabilitation Reserve Account once the work has been completed.

Landowners have the option to select a contractor to carry out rehabilitation, which is approved by the Department. If the landowner does not select a contractor, the Department of Agriculture and Resource Development chooses a contractor.

The stated objective of the Program is to ensure that depleted pits and quarries are rehabilitated to a condition which is "safe, environmentally stable, and compatible with adjoining lands." While each site is somewhat unique, achieving this general standard involves sloping embankments and spreading available overburden and topsoil stockpiles over the surface of the aggregate depleted land.

As of October 2019 the Program falls under the responsibility of Agriculture and Resource Development, it was formerly managed by Growth Enterprise and Trade (the Department).

In 2016/17 there were 84 rehabilitation projects completed totaling $3.4 million, and the Program collected $3 million in levies. At March 31, 2019, the rehabilitation fund total was $5.2 million.

The Department suspended the Program in July 2018. At the time of this report, the Program remains suspended while the Department continues to investigate irregularities and awaits the results of this investigation and a report from Internal Audit and Consulting Services.

Website Version

Scope and approach

Our investigation examined the Quarry Rehabilitation Program management of one large quarry site. As part of our investigation we engaged a professional engineer specializing in Civil Engineering with completed graduate studies in Environmental Engineering. We also conducted a forensic review of electronic records obtained, reviewed departmental documents, and interviewed departmental staff. We completed our investigation on January 18, 2020.

Our investigation was performed in accordance with Investigative and Forensic Accounting (IFA) standards as established by the Chartered Professional Accountants of Canada. IFA standards are designed for engagements that "involve disputed or anticipated disputes, or where there are risks, concerns, or allegations of fraud or other illegal or unethical conduct."

We did not assess the efficiency or effectiveness of the Program or perform an assessment of safety or environmental factors.

Website Version

Website Version

1 Weak internal controls and management of the Quarry Rehabilitation Program

1.1 Insufficient risk management processes

The Quarry Rehabilitation Program's (the Program) stated objective is to ensure that depleted pits and quarries are rehabilitated to a condition which is "safe, environmentally stable, and compatible with adjoining lands." In reviewing project files, the rationale for selecting sites for rehabilitation was not always clear. The rationale often contained the response "for safety and environmental purposes," but these purposes were not defined or rated on any type of classification scale. The Department has policies which mention public safety concerns and environmental factors, however they are not clearly defined.

Risk management is beneficial in that it allows management to focus resources where they are most needed. The Program lacks a risk management strategy that includes guidance on identification and prioritization of risks related to rehabilitation of depleted sites as well as a risk tolerance level. A database ranking potential projects in order of risk, including both safety and environmental risks, should be used to prioritize selection of rehabilitation projects.

The culture of the Program was to encourage spending from the fund. For example, we noted an email congratulating an inspector for being the first million dollar inspector, meaning that he had completed $1 million worth of rehabilitation projects in a year. This example shows how spending was the focus rather than the risks to the Province and the rehabilitation itself.

We were told that previous Program management did not consider the need for additional procedures based on the size of the project. For example, a multiple acre quarry site with 30 feet of limestone removed is very different than a small gravel pit with minimal damage to the land. The larger site may warrant the need for an environmental assessment, and/or a safety impact study, yet these were not done under the Program.

Website Version

CROWN SITES NOT PRIORITIZED

According to departmental officials, Crown pit and quarry sites were not prioritized. Projects were selected for rehabilitation based on applications received by the Program rather than on objective needs based criteria.

Crown sites should have been assessed for safety and environmental factors and been included in a province-wide database, where projects are ranked for rehabilitation on a risk basis. By not rehabilitating Crown pits on a risk basis, the Department exposed the government to potential liability related to environmental and safety issues.

Recommendation 1

We recommend that the Department prepare a documented risk assessment process which would include risk-based criteria for different project types to ensure appropriate guidance and approaches to identified risks. The risk analysis should include a rating, with justification, to predict likelihood of adverse impacts.

Recommendation 2

We recommend that the Department develop extended procedures for projects identified as high risk. These procedures could include, but are not limited to:

- Increased monitoring
- Environmental assessments
- Safety impact studies

Recommendation 3

We recommend that the department create and maintain a provincial database of all quarry sites, including crown quarries. Sites should be ranked based on risk, with higher risk sites prioritized for inspection and rehabilitation oversight.

Website Version

1.2 Weak controls over levy collection and royalty revenue

The Department was unable to provide us with the exact amount of rehabilitation levy contributed by a specific contractor/landowner. We were provided with 3 different amounts and the Department was not able to demonstrate which amount, if any, was correct. If the department is unable to provide us with a definitive amount for one contractor/landowner, we are concerned that they would be unable to do this for any contractor/landowner. In an attempt to determine the levy amount for the contractor, we reviewed Quarry Returns and deposit information. In reviewing this information and through discussions with staff we found a lack of controls over the completeness of levy and royalty revenues. Specifically we found:

- Quarry Returns are not assessed for reasonability
- Due dates on Quarry Returns are not monitored
- Weak controls over revenue reporting

QUARRY RETURNS NOT ASSESSED FOR REASONABILITY

The Quarry Return form requires contractors to self-report on tonnes of aggregate removed from sites in order to submit the amount of rehabilitation levy owed to the province. Additionally, the return requires the contractor to provide information on the number of tonnes provided to public agencies (including Manitoba Infrastructure) by contract. We saw examples of these forms provided by contracting companies, but were told no analysis was done with this information by the department.

To ensure tonnes reported on Quarry Returns are not understated, the Department should be performing reasonability procedures on a risk basis. In order to obtain knowledge of quarrying tonne amounts the Department can review:

- Field notes from inspector site visits
- Weigh scale information when available
- Data from other departments such as Manitoba Infrastructure
- Satellite imagery
- Detailed audit findings

Recommendation 4

We recommend that Quarry Returns be assessed for reasonability to ensure that the Department is receiving the levies and royalties owed to it as required by legislation. A risk based approach to reasonability assessments should be utilized.

Website Version

DUE DATES ON QUARRY RETURNS NOT MONITORED

Quarry Returns, and money owing if applicable, are required to be submitted by the landowner/ contractor within 30 days of the one year anniversary of the issuance of a permit.

The Department is not performing checks to ensure that for every permit issued there is a corresponding return filed, and is not monitoring for compliance with the due date requirement. As a result, returns are outstanding and royalties and levies remain uncollected. We also noted interest is not charged on returns filed late, as required by regulation.

Recommendation 5

We recommend that the Department develop a process to monitor Quarry Returns to ensure they are received on a timely basis as required by legislation. This process should also ensure that for every permit issued a corresponding return is received.

WEAK CONTROLS OVER REVENUE REPORTING

We found weak internal controls over revenue recording, beginning in 2010. One clerk opened the mail, received cash and cheques, prepared deposit information and made bank deposits from 2010 to 2018 (we did not examine deposits prior to 2010). We further noted there was no indication of managerial review over bank deposits. The lack of segregation of duties over receipt and recording of revenues, increases the risk of undetected errors.

There is no reconciliation between the Integrated Mining and Quarrying System (iMaQs-mining software database used by the Department) to the deposits recorded in SAP (Government Accounting Software).

We were told that after November 2018, a change was made to the depositing process, including some segregation of functions. We did not test this revised process as part of our investigation.

We were also told that no statements were provided to contractors/landowners indicating permits issued, returns filed and payments made unless requested. Providing regular statements is considered good practice as it helps to identify error and omissions.

Overall we found that systems in place are not robust and do not ensure that what is owed to the Program is paid.

Website Version

Recommendation 6

We recommend that the Department reconcile revenues recorded in the Integrated Mining and Quarrying System (iMaQs) to SAP.

Recommendation 7

We recommend that the Department ensure contractors/landowners are provided with regular statements of account.

1.3 Tendering practices not followed

The Department was given permission by Treasury Board to issue untendered contracts on smaller rehabilitation projects, where based on standardized heavy construction equipment rates the amount of the contract would be less than $50,000. This directive was effective January 2013, and further indicated that larger projects must be tendered.

During our review of Department emails and other project files we found no evidence of tendered projects from 2005 onwards. When we asked Department staff if they were aware of any tendered projects, they could not recall any. In order to avoid tendering larger projects, the practice was to break these projects into components of less than $50,000 per title, per year.

In our investigation we found one large site with several projects over 3 years, dividing what was really one large project into a series of smaller projects of less than $50,000 each. By doing this, project tendering was avoided. However, as these projects were done on adjoining properties, in consecutive years, the departmental policies governing the administration of the Quarry Rehabilitation Reserve Account would have required tendering of these projects.

Recommendation 8

The Department should ensure that required tendering practices are followed.

Website Version

1.4 Inspectors involved in too many aspects of the Program

There is a lack of segregation of incompatible functions for the inspectors. Inspectors were able to select rehabilitation projects to be approved, select the contractors hired to do the work if not specified by the landowner, and prepare equipment rental agreements with contractors. Inspectors were also telling contractors the amounts to invoice.

Because inspectors are responsible for the monitoring of contractors' work, being able to select contractors for rehabilitation work is an incompatible function, as favouritism and other inappropriate relationships, such as hiring friends, could develop.

We found evidence of inspectors emailing contractors instructions on amounts to invoice and what the invoice's breakdown should be. When we asked about this we were told it was common practice, yet departmental policies state that the cost estimate for a rehabilitation project is to be confidential and not divulged to the landowner or private contractor. This would certainly prohibit inspectors from instructing contractors on the preparation of invoices. Instead, the inspectors should have been acting in an independent oversight role over the Program which would involve performing checks on time cards and invoices prepared by contractors to ensure that there are no calculation errors and that value is received.

Recommendation 9

We recommend that the quarry inspection function be separated from the administration of quarry rehabilitation projects.

Website Version

1.5 Administration cost recovery from fund not supported

Since 2000, the Department has recovered costs from the rehabilitation fund. A May 2005 internal audit report indicates that the Department was recovering 75% of salary and administration costs from the rehabilitation fund. The report indicates that the fund was being overcharged with these costs, and the actual rate of recovery should have been approximately 57%. We reviewed the SAP general ledger details for the rehabilitation fund, and found that recoveries from the fund are still being claimed. We were told that since 2013/14 the Department has been recovering 85% of salary and administration costs.

The amount charged to the fund for inspector and administration time related to the Program should be substantiated by a methodology which includes formal tracking of time and administration costs related to inspection duties and quarry rehabilitation, otherwise the fund is subsidizing department operations.

Recommendation 10

We recommend that the Department implement a formal cost recovery methodology that is substantiated by tracking of costs related to inspection and quarry rehabilitation functions. The information should be updated annually to ensure that cost recovery rates remain relevant.

Website Version

1.6 File documentation standards not followed

In our review of project files, we found many files missing key information required by Program policies. This includes site photographs, time cards for equipment used in rehabilitation, and videos of the rehabilitation sites. Proper and complete file documentation is important, especially in the event of a dispute with a contractor or landowner. A project file checklist would ensure that all required information has been obtained and is included in the file.

In some files we looked at, the mines inspector and our engineering expert were not able to determine what work was done, where exactly it was done, and if the amount of work billed for was reasonable. Using technology available, date stamped pictures and videos of the sites before and after rehabilitation, including GPS-related information, would be beneficial for management review and quality assurance purposes. This and other supporting documentation should provide objective and sufficient evidence of rehabilitation and minimize subjectivity.

In reviewing the project files related to our investigation, we did not see evidence of management review for quality assurance processes. In fact, as one of our procedures we used Google Earth and compared it to the information included in these files, and found discrepancies.

Recommendation 11

We recommend that the Department develop a quality assurance process. The Department should update its file documentation standards to include a project file checklist, and ensure objective and sufficient evidence of rehabilitation is on file.

Website Version

1.7 Inadequate use of technology

Modern heavy duty machinery used in rehabilitation work is outfitted with technology that tracks and provides reports on hourly usage, idle time, and GPS location. This type of technology is not used by the Program to monitor projects. Instead, heavy equipment operators are required by departmental policies to have a Servis Recorder installed on their equipment. This recorder tracks machinery use on a time card by the motion of the equipment, creating a mark on a card to show the amount of time machinery was in use and when it was idle. This type of manual card reader is subject to manipulation as cards can be altered, creating risk of overpayment by the Program. The use of modern equipment technology would allow for better tracking of the equipment performing the work, the hours and dates the work was done, and on which legal titles the work is being done.

Recommendation 12

We recommend that the Department update its policy manual to ensure that it is using up to date technology practices to monitor rehabilitation projects.

Website Version

1.8 Contracts over $10,000 not disclosed on proactive disclosure site

Section 80 of the *Financial Administration Act* and its related regulation, requires the Minister of Finance to publish the name, amount, and types of contracts for the procurement of goods or services over $10,000 by the government. This is published on the provincial website under "Proactive Disclosure." Rehabilitation contracts are currently not included in this disclosure because the SAP report used to generate this information is based on expenses. As these contract payments are coming from a non-expense account (liability) they are not included in the proactive disclosure information.

Recommendation 13

We recommend that the Department of Finance monitor funds paid out of non-appropriation based general ledger accounts to ensure any contracts over $10,000 are listed on the government's proactive disclosure website.

Recommendation 14

We recommend that the Department ensure that all contracts over $10,000 paid out of the Quarry Rehabilitation Reserve are listed on the government's proactive disclosure website.

Website Version

1.9 Reporting framework requires improvement

In reviewing departmental annual reports for the fiscal years ending 2017 and 2018, we found a lack of public performance related information about the Program. There was no information on the Program in the 2019 annual report despite the fact that it was in operation until July of that fiscal year.

Public reporting of Program performance information is necessary to ensure readers have the ability to determine whether the Department is working toward its stated objective and whether what was planned was achieved. Public reporting should include information on how rehabilitation funds were used. Reporting in this way allows readers to hold government accountable for results achieved.

In the 2017 annual report it states "the number of hectares and projects rehabilitated are key factors in determining the effectiveness of the Program," with similar information provided in 2018. Effectiveness would be better measured by comparing progress to an established plan which looks at rehabilitation and inspection risks and sets priorities based on those risks. The number of hectares and projects rehabilitated does not provide evidence of effectiveness, as a large number of lower risk sites may be rehabilitated before higher risk sites, which would not be an effective use of resources. There was no quantifiable information to indicate whether the Program was meeting its objective and no information explaining changes from the prior year.

In the 2017 and 2018 annual reports, it states that "rehabilitation work is undertaken through private equipment agreements or tendered contracts," which makes it seem like tendering contracts was normal practice, although it was not (see **SECTION 1.3** for information on tendering practices). The number of contracts and whether they were tendered or untendered was not provided. In addition, there was no information on inspections completed, the number of orders issued and consequences of any non-compliance with regulations.

In 2017 to 2019, the Department's annual reports provides a reconciliation of the Abandonment Fund Reserve Account for Petroleum, including the beginning of year balance and additions to the fund less payments from the fund. Similar information is not provided for the Quarry Rehabilitation Fund but would be beneficial as it would show the changes to the fund for the year.

Website Version

Recommendation 15

We recommend that the Department review information provided on its inspection function and the Program in its annual report and ensure information included allows readers to determine whether the objective of the Program is being met and how the funds entrusted to the Department are being used. This would include the development and reporting of key performance indicators and explanations of any variances from planned results.

This page is intentionally left blank.

Website Version

Our Vision

Valued for positively influencing public sector performance through impactful audit work and reports.

Our Mission

To focus our attention on areas of strategic importance to the Legislative Assembly, and to provide Members of the Legislative Assembly with reliable and efficient audits.

Our mission includes easy-to-understand audit reports that include discussions of good practices within audited entities, and recommendations that, when implemented, will have a significant impact on the performance of government.

Our Values

Accountability | Integrity | Trust | Collaboration | Innovation | Growth

Deputy Auditor General
Tyson Shtykalo

Principals
Jeffrey Gilbert
Erika Thomas

Communications Manager
Frank Landry

Admin Support
Jomay Amora-Dueck
Tara MacKay

Graphic Design
Waterloo Design House

Website Version

Website Version

Auditor General
MANITOBA

For more information, please contact our office at:

Office of the Auditor General
500-330 Portage Avenue
Winnipeg, Manitoba R3C 0C4

Phone: 204-945-3790 Fax: 204-945-2169
contact@oag.mb.ca | www.oag.mb.ca

Facebook.com/AuditorGenMB
Twitter.com/AuditorGenMB
Linkedin.com/company/manitoba-auditor-general