

Management Letter**Department of Transportation**
Fiscal Year Ended June 30, 2001

Financial Audit Division

The Office of the Legislative Auditor (OLA) is a professional, nonpartisan office in the legislative branch of Minnesota State government. Its principal responsibility is to audit and evaluate the agencies and programs of state government (the State Auditor audits local governments).

OLA's Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division also investigates allegations that state resources have been used inappropriately.

The division has a staff of approximately fifty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

Consistent with OLA's mission, the Financial Audit Division works to:

- Promote Accountability,
- Strengthen Legislative Oversight, and
- Support Good Financial Management.

Through its Program Evaluation Division, OLA conducts several evaluations each year and one best practices review.

OLA is under the direction of the Legislative Auditor, who is appointed for a six-year term by the Legislative Audit Commission (LAC). The LAC is a bipartisan commission of Representatives and Senators. It annually selects topics for the Program Evaluation Division, but is generally not involved in scheduling financial audits.

All findings, conclusions, and recommendations in reports issued by the Office of the Legislative Auditor are solely the responsibility of the office and may not reflect the views of the LAC, its individual members, or other members of the Minnesota Legislature.

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If you have comments about our work, or you want to suggest an audit, investigation, evaluation, or best practices review, please contact us at 651-296-4708 or by e-mail at auditor@state.mn.us

Department of Transportation

Table of Contents

	Page
Report Summary	1
Management Letter	2
Status of Prior Audit Issues	10
Department of Transportation Response	11

Audit Participation

The following staff of the Office of the Legislative Auditor prepared this report:

Claudia Gudvangen, CPA	Deputy Legislative Auditor
Tom Donahue, CPA	Audit Manager
Ken Vandermeer, CPA, CFE	Auditor-in-Charge
Heather White	Auditor
Sheila Sun	Auditor

Exit Conference

The findings and recommendations in this report were discussed with the following staff of the Department of Transportation at an exit conference held on March 18, 2002:

James Swanson	Assistant Commissioner
Randy Halvorson	Program Delivery
Dick Stehr	Acting Director, PSG
Jerry Holland	Administrative Director, Program Delivery Group
Dick Swanson	Director, Financial Management
Dennis Herzog	Financial Reporting Supervisor
Julie Skallman	State Aid
Ronald Gipp	Audit Director
Larry Kienitz	Internal Audit
Dave Christensen	Internal Audit

Report Summary

Key Findings:

As a result of audit procedures performed by our office and the Department of Transportation (MnDOT) Office of Audit, we identified various weaknesses in internal control and instances of noncompliance. For each finding, we recommended that MnDOT establish appropriate procedures or improve its oversight to ensure compliance with federal and state regulations. In addition, we recommended that the department eliminate charges to federal funds for project activities that do not comply with federal regulations. Areas of concern raised in MnDOT's internal audit report include:

- MnDOT did not ensure compliance with federal and state reporting requirements for the removal and disposition of hazardous building materials. (Finding 1, page 4)
- MnDOT and Hennepin County engineers did not properly control lead paint residue removed from bridges. (Finding 2, page 5)
- MnDOT did not ensure an independent appraisal of quality assurance and quality control requirements for bituminous production for one of its projects. (Finding 3, page 6)
- MnDOT did not ensure contracts were properly executed prior to payment. (Finding 4, page 6)
- MnDOT did not follow or ensure compliance with certain contract permit requirements. (Finding 5, page 7)
- MnDOT should improve certain project oversight procedures. We identified various areas where departmental procedures were inadequate or ineffective. (Finding 6, page 8)

Management Letters address internal control weaknesses and noncompliance issues found during our annual audit of the state's financial statements and federally funded programs. The scope of work in individual agencies is limited. During the fiscal year 2001 audit, our work at the Department of Transportation focused on state highway construction expenditures, grants for airport improvement, and grants to local governments for road construction and maintenance. We also reviewed local bridge and transit project disbursements, rail service improvement loan balances, and highway user tax transfers. Finally, we reviewed two federally funded programs administered by the department to determine whether the department complied with certain federal requirements. Our work on the federal programs was performed in conjunction with the MnDOT Office of Audit. The department's response is included in the report.

Senator Ann H. Rest, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Elwyn Tinklenberg, Commissioner
Department of Transportation

This report provides our conclusions from work performed at the Minnesota Department of Transportation (MnDOT) as a part of our audit of the State of Minnesota's financial statements and its federal programs. The report includes findings from audit procedures performed by the MnDOT Office of Audit. We relied, in part, on the work of the MnDOT Office of Audit to ensure the state's compliance with the requirements described in U.S. Office of Management and Budget (OMB) *Circular A-133 Compliance Supplement*. We emphasize that this does not constitute a comprehensive audit of the Department of Transportation.

Table 1 identifies the expenditure activities within MnDOT that were material to the state's financial statements. We performed certain audit procedures on these MnDOT programs as part of our objective to obtain reasonable assurance about whether the State of Minnesota's financial statements for the year ended June 30, 2001, were free of material misstatement.

Table 1
Expenditures Material to the State's Financial Statements
Fiscal Year 2001
(in thousands)

<u>Fund</u>	<u>Area</u>	<u>Amount</u>
Trunk Highway	Capital Outlay	\$515,065
County State-Aid Highway	Grants to Counties	\$355,542
Municipal State-Aid Street	Grants to Municipalities	\$83,451
Transportation Fund	County and Municipality Bridge Projects	\$10,447
Federal Fund	Federal/County Road and Bridge Grants	\$91,149
	Airport Improvement Grants	\$37,658

Source: State of Minnesota's *Comprehensive Annual Financial Report* and the Minnesota Accounting and Procurement System for fiscal year 2001.

The Departments of Revenue and Public Safety deposit fuel tax receipts and motor vehicle registration tax receipts into the Highway User Tax Distribution Fund. Funds are transferred from the Highway User Tax Distribution Fund mainly to the Trunk Highway Fund, the County

Department of Transportation

State-Aid Highway Fund, and the Municipal State-Aid Street Fund. Distributions from the Highway User Tax Distribution Fund to these funds are identified in Table 2.

Table 2
Highway User Tax Distribution Fund
Fiscal Year 2001
(in thousands)

<u>Fund</u>	<u>Amount</u>
Trunk Highway	\$716,569
County State-Aid Highway	\$419,155
Municipal State-Aid Street	\$114,654

Source: State of Minnesota's *Comprehensive Annual Financial Report* and the Minnesota Accounting and Procurement System for fiscal year 2001.

Table 3 identifies the State of Minnesota's major federal programs administered by the Department of Transportation. We performed certain audit procedures on these programs as part of our objective to obtain reasonable assurance about whether the State of Minnesota complied with the types of compliance requirements that are applicable to each of its major federal programs. Our work was performed in conjunction with the MnDOT Office of Audit.

Table 3
Major Federal Programs Administered by the Department of Transportation
Fiscal Year 2001
(in thousands)

<u>Program Name</u>	<u>Expenditures</u>
Highway Planning and Construction – CFDA 20.205	\$408,809
Airport Improvement Grants – CFDA 20.106	\$37,658

Source: Minnesota Accounting and Procurement System for fiscal year 2001.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Conclusions

Our December 7, 2001, report included an unqualified opinion on the State of Minnesota's general purpose financial statements for the year ended June 30, 2001. In accordance with *Government Auditing Standards*, we also issued our report, dated December 7, 2001, on our consideration of the State of Minnesota's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grants. At a later date, we will issue our report on compliance with requirements applicable to each major federal program and internal control over compliance in accordance with OMB *Circular A-133*.

Department of Transportation

As a result of our audit procedures and the federal compliance review performed by the MnDOT Office of Audit, we identified the following weaknesses in internal control and instances of noncompliance at the Department of Transportation.

1. The Department of Transportation (MnDOT) did not ensure compliance with federal and state reporting requirements for the removal and disposition of hazardous building materials.

According to MnDOT's internal audit report, MnDOT project engineers did not exercise effective oversight to ensure that contractors filed required reports or other documents related to the removal and disposition of asbestos and lead. The MnDOT Office of Audit identified numerous violations of reporting requirements in its review of six different state projects, which included 40 building removals and one force main pipe. The total contract amount for all six projects exceeded \$79.4 million, and the federal share exceeded \$66.7 million. The contract amount allocated to the removal and disposition of hazardous building materials was significantly lower but was not quantified.

The internal audit report concluded that failure to comply with the federal and state requirements exposed MnDOT to potential fines of hundreds of millions of dollars or more, as well as criminal penalties. The following is a summary of missing reports and documents from the 40 building removals:

- **Inspection Reports:** Provide recommendations regarding the disposition of hazardous materials from building removals.
 - 29 of 40 reports were not filed.
 - 7 of 11 reports filed did not specify that a certified inspector performed the inspection.
- **Chain of Custody Forms:** Identify who handled samples analyzed for asbestos content.
 - 36 of 40 forms were not filed.
 - 4 of 4 forms on file did not contain the name of the inspector.
- **Laboratory Reports:** Document asbestos characteristics.
 - 8 of 40 reports were not filed.
 - 29 of 32 reports reflected asbestos levels greater than 1%, up to 65%.
 - 5 of 29 reports did not document if an accredited laboratory was used.
- **Demolition Notice:** The Notice of Intent to Perform a Demolition submitted by the contractor to MnDOT and the Minnesota Pollution Control Agency (MPCA) provides the opportunity for those agencies to observe the removal of hazardous materials.
 - 31 of 40 notices were not filed with MnDOT.
 - 13 of 40 notices were not filed with MPCA.
- **Asbestos Notice:** The Notice of Asbestos Related Work should be submitted by the contractor to the Minnesota Department of Health (MDH) and MPCA.
 - 39 of 40 notices were not on file at MDH.
 - 38 of 40 notices were not on file at MPCA.
- **Abatement Reports:** Document any action taken regarding hazardous asbestos levels.

Department of Transportation

- 1 building met asbestos evaluation thresholds without documenting the abatement.
- For 5 building removals it could not be determined if asbestos evaluations (inspection and testing) or abatements had occurred.

□ **Disposition of Asbestos Reports:** A manifest documenting asbestos disposal is required by MPCA.

- 33 of 37 disposal manifests were not available.

□ **Lead Paint Reports:** Documents testing levels of lead paint content.

- 40 of 40 project files did not document testing for lead paint.

MnDOT project engineers also failed to ensure completion of similar reports and forms for a force main pipe.

The MnDOT internal audit report discussed the use of T-Contracts, which incorporate the federal requirements from various agencies, as a way to improve communication of federal regulations. Another solution suggested was to provide additional detail in the construction contract language.

Recommendations

- *The Department of Transportation should ensure that project engineers provide appropriate oversight of federal and state reporting requirements for the removal and disposition of hazardous building materials.*
- *The Department of Transportation should eliminate charges to federal funds for project activities that do not comply with federal regulations.*

2. Prior Finding Not Implemented: The Department of Transportation and Hennepin County engineers did not properly control lead paint residue removed from bridges.

According to MnDOT's internal audit report, for one state-aid project in Hennepin County, project engineers inappropriately authorized the disposal of 117 tons of bridge lead paint blasting residue at a landfill. The project contract proposal provided that the residue should have been disposed of at a hazardous waste treatment facility. The lead substances collection and disposal bid item was valued at a total of \$2.4 million, including \$1.9 million in federal funds. In addition, for one other state project, a manifest documenting the shipment of 20 cubic yards of blasting residue could not be found.

Concerns regarding control over lead paint blasting residue have appeared in MnDOT's internal audit reports for five consecutive fiscal years from 1997 through 2001. However, the problems in this area have persisted. More direct management supervision in this area is needed.

Project personnel felt that in the future, there would be fewer projects involving lead paint on bridge steel. A November 2001 Office of Bridges and Structures database report identified 634

Department of Transportation

of 4,672 (14%) Mn/DOT bridges with lead paint. The report also identified 751 of 15,293 (5%) city, county, and township bridges with lead paint.

Recommendations

- *The Department of Transportation should establish appropriate procedures to ensure compliance with federal and state requirements for the removal and disposition of lead paint.*
- *The Department of Transportation should eliminate charges to federal funds for project activities that do not comply with federal regulations.*

3. The Department of Transportation did not ensure an independent appraisal of quality assurance and quality control requirements for bituminous production for one of its state aid projects.

According to MnDOT's internal audit report, the City of Moorhead hired a consultant to perform material testing for both bituminous production quality assurance and quality control. Since quality assurance testing serves to validate the quality control testing, these two tests should be performed by separate entities. Bituminous materials for this project totaled \$439,000 or 22% of the \$2 million certified as of June 5, 2001. This total included \$352,000 in federal funds.

Federal regulations (23 CFR Part 637.205) require the contractor, or someone the contractor hires, to perform quality control testing. The city, or someone the city hires, is required to perform quality assurance testing. Following this requirement would help ensure that quality control and quality assurance testing practices and results were correct.

Recommendations

- *The Department of Transportation should work with grant recipients to ensure they understand federal and state quality control and quality assurance requirements.*
- *The Department of Transportation should eliminate charges to federal funds for project activities that do not comply with federal regulations.*

4. Prior Finding Not Implemented: The Department of Transportation did not ensure contracts were properly executed prior to payment.

According to MnDOT's internal audit report, Wadena County paid a contractor prior to the execution of a delegated contract process contract. Work started on the project on June 20, 2000, even though the contract was not executed until July 19, 2000. The total contract amount exceeded \$1.9 million with \$1.5 million in federal funding. Wadena County paid \$49,000 prior to the execution of the contract.

Department of Transportation

A district state aid engineer also inappropriately signed two supplemental agreements on a delegated contract process project supervised and administered by Wadena County. No further signatures were noted on the agreements, which typically contain authorized signatures of legal counsel as well as other city and state officials. By signing the supplemental agreement, the legal exposure to liability could change from the county to MnDOT. The engineer stated that he thought he had the authority to approve supplemental agreements.

In addition, MnDOT engineers authorized payment on two other supplemental agreements prior to the execution of the agreements. Federal and state regulations both require that a contract be executed prior to payment. For the two supplemental agreements, MnDOT project engineers inappropriately authorized payment using partial estimate voucher back sheet adjustments. This concern was also raised in MnDOT's internal audit reports for fiscal years 1998, 1999, and 2000.

Federal Highway Administration personnel indicated that a payment made prior to executing the contract would violate 23 Code of Federal Regulations 635.114. An executed contract is a prerequisite to federal participation in construction costs and is considered authorization to proceed. Minnesota Statutes also require a fully executed contract or supplemental agreement prior to payment.

Federal Highway Administration personnel consider the State of Minnesota the steward for delegated contract process projects, which implies the state is responsible to ensure a valid contract exists prior to any payments. The review process at the state level starts with the project engineer.

Recommendations

- *The Department of Transportation should ensure that contracts are properly executed prior to payment.*
- *The Department of Transportation should eliminate charges to federal funds for project activities that do not comply with federal regulations.*

5. Prior Finding Not Implemented: The Department of Transportation did not follow or ensure compliance with certain contract permit requirements.

According to MnDOT's internal audit report, MnDOT project engineers did not ensure that valid National Pollutant Discharge Elimination System (NPDES) permits were included in the project proposals for 13 of 14 construction projects reviewed. In addition, 10 of 11 projects reviewed did not include weekly documentation of inspections as stipulated in the NPDES permit. These permits are required by the Minnesota Pollution Control Agency to provide control over construction activities for project erosion and sediment control. Contractors are responsible for the submission of NPDES permits.

Department of Transportation

Also, for 2 of 12 projects reviewed, MnDOT project engineers processed construction contracts without requiring the submission of an Application for General Storm Water permit. In addition, one other project did not contain a Temporary Erosion Control Plan to control run-off during construction. Noncompliance with contract stipulations could result in unsatisfactory work and possible liability for contract costs.

Recommendation

- *The Department of Transportation should ensure compliance with all contract requirements.*

6. The Department of Transportation should improve certain project oversight procedures.

The MnDOT internal audit report identified various concerns and issues where project management oversight could be strengthened, including:

- Yield checks performed on bituminous mixtures for one project did not provide sufficient controls to ensure proper payments. The current procedures for yield checks did not address random selection, limits on variability of results, or placement of the bituminous mixture on the roadway. Without these controls, payments for improper levels of bituminous materials may occur.
- Certification of materials compliance reviews, conducted by the MnDOT State Aid for Local Transportation Group, did not include all final projects. In addition, state aid and delegated contract process projects did not include responses to the review. MnDOT internal auditors also reported concerns with compliance reviews in fiscal years 1997, 1998, and 1999. Noncompliance with federal and state regulations may occur and remain undetected if projects are not included in the review process.
- Construction diaries do not accurately record which contractors and subcontractors worked on a project each day. As a result, MnDOT program personnel had not requested detailed payroll records to support the wages paid. Contractors must submit detailed payroll records to support compliance with the federal minimum wage regulations (Davis-Bacon). The MnDOT Office of Audit could not verify compliance with the federal requirements without detailed payroll records.
- For one project, project engineers failed to document additions to the aggregate sources used in two bituminous course mixtures placed on a roadway. According to bituminous mix special provisions, the source of aggregate must be documented and tested. Because samples of the aggregate sources used were not tested, there was no determination as to the amount of deleterious material, such as shale, in the aggregate. Also, tests of the aggregate's durability or its ability to withstand the freeze/thaw cycle were not performed. In addition, the internal auditor's report suggested that a project supervisor's handwritten additions to aggregate sources after the fact may have been unethical. As a result, the Department of Transportation is currently investigating this issue.

Department of Transportation

Recommendation

- *The Department of Transportation should strengthen its project oversight procedures to ensure compliance with federal and state requirements.*

7. The Department of Transportation did not properly record the date of liability for expenditure transactions recorded on the state's accounting system.

As a result of our audit work, we found that the Department of Transportation did not enter the date services were received into the record date field on the Minnesota Accounting and Procurement System (the state's accounting system). We made adjustments of approximately \$23.3 million to the state's draft financial statements for the year ended June 30, 2001.

According to state policy, the record date field should identify the date that agencies received goods or services, which is the date when the liability was incurred. The correct liability date is important to determine accounts payable for financial reporting purposes. The Department of Finance summarizes all payments with a record date of June 30 or prior as accounts payable in the state's financial statements. Without proper recording of the record date, the annual financial statements may be inaccurate.

Recommendation

- *The Department of Transportation should determine the date of liability for each program and ensure proper coding on the state's financial statements.*

This report is intended for the information of the Legislative Audit Commission and the management of the Department of Transportation. This restriction is not intended to limit the distribution of this report, which was released as a public document on March 26, 2002.

/s/ *James R. Nobles*

James R. Nobles
Legislative Auditor

End of Fieldwork: February 8, 2002

Report Signed On: March 22, 2002

/s/ *Claudia J. Gudvangen*

Claudia J. Gudvangen, CPA
Deputy Legislative Auditor

Department of Transportation

Status of Prior Audit Issues As of February 8, 2002

March 15, 2001, Legislative Audit Report 01-13 examined the Department of Transportation's activities and programs material to the State of Minnesota's Annual Financial Report and the Single Audit for the year ended June 30, 2000. The audit covered programs for Highway Planning and Construction (CFDA 20.205), Public Transportation Non-Urbanized (CFDA 20.509), Airport Improvement (CFDA 20.106), Trunk Highway Fund expenditures, County State-Aid Highway Fund grants, Municipal State-Aid Street Fund grants, and Highway User Tax Distributions. The report included one finding that addressed seven issues of noncompliance with certain federal and state requirements. Two issues were resolved in fiscal year 2001. The remaining five issues were carried forward to this report. These concerns, as well as one new issue, are discussed in Findings 1 to 7.

State of Minnesota Audit Follow-Up Process

The Department of Finance, on behalf of the Governor, maintains a quarterly process for following up on issues cited in financial audit reports issued by the Legislative Auditor. The process consists of an exchange of written correspondence that documents the status of audit findings. The follow-up process continues until Finance is satisfied that the issues have been resolved. It covers entities headed by gubernatorial appointees, including most state agencies, boards, commissions, and Minnesota state colleges and universities. It is not applied to audits of the University of Minnesota, any quasi-state organizations, such as the metropolitan agencies or the State Agricultural Society, the state constitutional officers, or the judicial branch.



Minnesota Department of Transportation

Transportation Building
395 John Ireland Boulevard
Saint Paul, Minnesota 55155-1899

March 22, 2002

James Nobles, Legislative Auditor
First Floor –100 Centennial Office Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for your letter of March 8, 2002, and the attached report. We certainly appreciate all of the time and effort that went into your audit review for Fiscal Year 2002.

I find it reassuring that findings 1 through 6 in the 2002 legislative audit relate directly to findings of a Department of Transportation audit (Report No. 02-800-40), conducted by our internal audit team. We have begun implementation of several initiatives to address concerns raised in the internal audit. We believe the expeditious implementation of these recommendations will further our efforts to be accountable and responsive to the citizens of Minnesota.

Deputy Commissioner Doug Weiszhaar and staff reviewed the 2002 Legislative Audit Report to determine if our department should take additional action based on your findings. Our response to your findings are as follows:

Regarding Finding 1— “The Department of Transportation did not ensure compliance with federal and state reporting requirements for the removal and disposition of hazardous building materials.” Mn/DOT concurs with the recommendations and is taking steps to ensure future compliance, including providing staff oversight of federal and state reporting requirements for removing and disposing of hazardous building materials. Mn/DOT, in partnership with the Pollution Control Agency and other agencies, will develop a handbook of current regulations and a documentation checklist. We believe there will be limited, if any, impact on federal participation.

Regarding Finding 2— “Prior Finding Not Implemented: The Department of Transportation and Hennepin County engineers did not properly control lead paint residue removed from bridges.” Mn/DOT concurs with the recommendations and will work with county engineers to conduct training for people responsible for lead paint disposal. We do believe that the number of projects in the future involving lead paint will be limited. We believe there will be limited, if any, impact on federal participation.

Regarding Finding 3— “The Department of Transportation did not ensure an independent appraisal of quality assurance and quality control requirements for bituminous production for one of its state aid projects.” Mn/DOT concurs with the recommendations and will continue to work with grant recipients to ensure their understanding of federal and state quality assurance and quality control requirements. We believe there will be limited, if any, impact on federal participation.

Regarding Finding 4— “Prior Finding Not Implemented: The Department of Transportation did not ensure contracts were properly executed prior to payment.” Mn/DOT concurs with the recommendations and is taking steps to ensure future compliance. The State Aid Manual and the delegated contract process guidance will be reviewed so that the intent of Mn/DOT approval is clear. Mn/DOT has also directed project engineers, including State Aid engineers, to review the existing processes for supplemental agreements. We believe there will be limited, if any, impact on federal participation.

Regarding Finding 5— “Prior Finding Not Implemented: The Department of Transportation did not follow or ensure compliance with certain contract permit requirements.” Mn/DOT concurs with the recommendations and is strengthening its current practices to meet all environmental permitting requirements. This will include a discussion of the issue at the County Engineer’s conference and the City Engineer’s conference to heighten awareness of the issue.

Regarding Finding 6— “The Department of Transportation should improve certain project oversight procedures.” Mn DOT concurs with the recommendations and is strengthening its current practices to ensure future compliance, including creating additional awareness among project personnel of the importance of reviewing project documentation for contractor compliance with Davis-Bacon minimum wage requirements.

Regarding Finding 7— “The Department of Transportation did not properly record the date of liability for expenditure transactions recorded on the state’s accounting system.” Mn/DOT concurs with the recommendation. We have issued a directive to MAPS Users to properly record all payment transactions. We will monitor the situation and provide training where needed in order to ensure that liability information is recorded properly.

While not detailed above in our formal response, it is important to recognize that the preponderance of non-compliance issues (noted in Finding 4) center on supplemental agreements or technical changes in the course of work and not on our compliance with the master contract award process. The process of effectively managing a construction project requires the use of contractors to complete projects on a timely basis. There are times when this need overwhelms the supplemental contracting process. While we agree with the practices in place for master contracts, we will evaluate the supplemental process and submit recommendations to the Department of Finance and to the Department of Administration that better align the state’s supplemental contracting processes with construction project-management practices.

In conclusion, I would like to reinforce that Mn/DOT is taking appropriate actions to meet the outlined recommendations. We thank you for the opportunity to respond, and progress toward implementation of specific recommendations will be monitored. The contact person for information on that follow-up activity will be Dennis Herzog. He can be reached at (651) 297-1481.

Sincerely,

/s/ Elwyn Tinklenberg

Elwyn Tinklenberg
Commissioner