



Fraud, Waste and Abuse – What You Need to Know

Presented by

Bill Felder, CPA, CISA

Harper, Rains, Knight & Company, P.A.



Harper, Rains, Knight & Company



Who Are We and What are We Looking For?

Harper, Rains Knight and Co, P.A. is a public accounting firm tasked with integrity monitoring of the various projects being implemented through MDEQ, necessitated by the 2010 Deepwater Horizon oil spill. These services support MDEQ's fiduciary responsibility to ensure funds are expended in accordance with agreements negotiated between MDEQ and contractors/subrecipients and may include: the development and implementation of procedures to deter and report fraud, waste and abuse, develop and conduct education and awareness training, providing assistance with contractor/subrecipient monitoring, identify areas of risk and fraud that may occur in a project, monitor contractor/subrecipient compliance with laws, rules and regulations, review of documents submitted to MDEQ and reporting of potential fraud, waste and abuse to appropriate state and federal agencies.



Why Do You Need This Training?

- Potential recipients and recipients of RESTORE, NFWF and NRDA funds are responsible for spending each dollar received toward their intended purpose
- It is imperative that a perception of integrity and honesty in the spending of the available funds be present in both fact and appearance
- Gain an understanding of FWA and how it could impact your projects by identifying potential areas of weakness
- To be able to explain to employees, others within your company and contractors their responsibilities regarding FWA
- To obtain the knowledge necessary to understand and fulfill applicable contract requirements

Each of you individually are the key to the integrity of the program as a whole. It only takes one project to have fraud, waste and abuse happen to them to effect everyone!



What is Fraud, Waste and Abuse?

- Fraud – intentional wrongful or illegal act intended to result in financial misstatements or the misappropriation of assets.

- Examples
 - Creating false documents/statements
 - Kickbacks/bribes
 - Submitting multiple invoices for the same work or the falsification of support for work not performed
 - Manufactured documentation for reimbursement requests
 - Accessing a computer without authorization or exceeding authorized access with the intent to commit prohibited acts
 - Soliciting information from MDEQ personnel during the bidding process



What is Fraud, Waste and Abuse?

- Waste – to use or expend resources carelessly, extravagantly or outside of their intended purpose. Waste is usually the result of deficient controls, policies or accepted practices. MDEQ reserves the right to deem waste as an ineligible expense and not reimburse those costs.

- Examples
 - Purchase of unnecessary equipment
 - Purchase of excessive or unnecessary materials
 - Payroll expenses for work performed unrelated to the project due to lack of time cards or timesheets detailing when employees are present on the job



What is Fraud, Waste and Abuse?

- Abuse – behavior that is deficient or improper based on what a prudent person would consider reasonable or necessary. While abuse may initially lack intent it can develop into fraud if it remains unchecked.

- Examples
 - Misrepresentation of authority
 - Use of resources and assets for personal needs
 - Misrepresenting in a bid proposal work to be performed by the grantee but once the contract is awarded request sub-contract approval by MDEQ



What Are Red Flags of Employee Fraud, Waste and Abuse?

- Organizational
 - Structure of the financial transactions
 - Lax operational/financial structure
 - Unusually close relationships with vendors
- Individual
 - Controlling attitude or unwillingness to share responsibilities
 - Previous complaints about the company/vendor
 - Pressure from the organization to meet specific time/financial goals
 - Family pressures (addiction, divorce, children)
 - Sudden increase in lifestyle



What Can You Do to Deter Fraud, Waste and Abuse

- Adoption of policies and procedures
- Internal controls
- Knowledge of applicable laws and regulations
- Risk mitigation
- Insurance coverage
- Contractor oversight
- Training and education
- Document retention



What Can You Do to Deter Fraud, Waste and Abuse

Adoption of Policies and Procedures

The majority of all fraud is due to asset misappropriation. Therefore, the top priority should be to establish policies and procedures that are both effective and efficient to eliminate the opportunity to commit fraud, waste and abuse. Management should perform a detailed review of their operations and determine what areas are most vulnerable and create policies and procedures as necessary. Examples of policies include:

- Reimbursement requests
- Procurement
- Payroll and expense reports
- Appraisals
- Property and equipment
- General fraud, waste and abuse and whistleblower policies



What Can You Do to Deter Fraud, Waste and Abuse

Adoption of Policies and Procedures

Once management has determined what areas should have a policy or procedure adopted it is important to:

- Have policies in writing and accessible to all employees
- Provide a copy of policies to all employees and post policies in a public place
- Emphasize enforcement of the policy, policies and procedures should not be an item to check off a to do list
- Perform a periodic review of all policies and procedures to determine if any should be updated
- Have employees periodically sign an acknowledgement that they have received and read all the policies and procedures and they have complied with all requirements



What Can You Do to Deter Fraud, Waste and Abuse

Internal Controls

Internal controls work hand in hand with adopted policies and procedures to close any holes to prevention of fraud, waste and abuse. Some examples of good internal controls that you can implement are:

Project Areas	Control
Payments to vendors	Segregation of duties between the person responsible for creating checks and signing them, dual signatures on checks greater than a management approved dollar amount
Payroll	Required all time cards or timesheets to be reviewed and signed by the foreman on site indicating approval
Procurement	Have multiple members of management part of the award process, require management and employees to complete conflict of interest acknowledgement statements when new contracts are awarded



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- Applicable state and federal laws and regulations (including but not limited to)
 - 2 CFR, part 200
 - Procurement (200.317 to 200.326)
 - Cost allocations - leverage and other funding sources (200.402 to 200.415)
 - Purchase of equipment (200.439)
 - Program income (200.80)
 - Record retention (200.333 to 200.337)



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

Procurement standards (200.317 to 200.326) require a state procuring items under a federal award to follow the same policies and procedures it uses for procurements from non-federal awards. It also requires contracts to include “Contract Provisions for non-Federal Entity Contracts Under Federal Awards”. General procurement standards include maintaining oversight of contractors, maintaining written conflict of interest standards of conduct, avoiding the acquisition of unnecessary or duplicate items and retention of procurement documents sufficient to show the history of the procurement. Standards also require open competition through the bid process, methods of procurement dependent on the dollar amounts, encouraging contracts with minority and women owned businesses when possible and estimating a contract cost and price.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

Cost allocation standards (200.402 to 200.415) require all costs to be allowable, meaning, to be reasonable and necessary for the performance of the contract, be within specified limitations for covered items, consistent with policies and procedures and treated consistently during the contract time frame. They also address the allocation of direct and indirect costs based on if it is a cost that is incurred specifically for the contract, benefits both the contract award and other work not covered by the contract, is necessary to complete the work, can be distributed using reasonable methods including proportional benefit and is not allocated in order to avoid fund deficiencies or restrictions on spending. Standards also require payments for costs that are unallowable to be refunded.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

Purchase of equipment (200.439) standards address the allowability of capital expenditures. Generally, purchases or improvements of equipment, buildings and lands are not allowable unless they have prior written approval. Special purpose equipment purchases are allowed if they are less than \$5,000. If greater, they would require approval. Allowed purchases should be recorded in the period in which they are purchased unless otherwise negotiated.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

Program income standards (200.80) define program income as gross income earned by the project that is directly generated by an activity as a result of the receipt of awarded funds. It can include fees for services performed, rental income, sales of items manufactured using awarded funds and principle and interest on loans made using awarded funds. Program income does not include interest earned on awarded funds that were advanced, rebates, credits and discounts.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

Record retention standards (200.333 to 200.337) require documents covering financial reimbursement and the purchase of property and equipment to be retained for a period of 3 years from the date of the submission of the final request for funds or final disposition unless there is litigation, claim or audit started before the expiration of the 3 year period, in which case, documents must be retained until the litigation, claims or audit findings are resolved. Program income records must be retained 3 years from the final year that program income is earned.

MDEQ has determined that all records for RESTORE, NFWF and NRDA are to be retained for a period of 10 years.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- Applicable laws and regulations (including but not limited to)
 - 31 CFR, parts 34 and 19
 - Department of Treasury (RESTORE Act Regulations)
 - Government Debarment and Suspension
 - 31 US Code, Chapter 38 “Administrative Remedies for False Claims and Statements”
 - 18 US Code, Chapter 38 “Program Fraud Civil Remedies Act”
 - 18 US Code, Chapter 874 Kickbacks from Public Works Employees and 40 US Code, Section 276c Copeland “Anti-Kickback” Act



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

The U.S. Department of Treasury 31 CFR, part 34 (RESTORE Act) established the regulations for the Gulf Coast Restoration Trust Fund, which receives money from administrative and civil penalties awarded after the Deepwater Horizon oil spill and makes those funds available for approved restoration projects. It determined the division of funds between the direct component, gulf coast council, spill impact component and the NOAA Science Program and provided guidance on eligible activities under each funded division, as well as, administration of each division, such as, allocation of funds, reporting, recordkeeping and audits.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

31 CFR, part 19 covering debarment and suspension protects the public from funds being used to engage with individuals or businesses who are shown to not be responsible. An exclusion is considered to be a serious action and cannot be used as a form of punishment. Exceptions are not allowed unless approved in writing by the Secretary of the Treasury. Excluded parties are listed on the “*Excluded Parties List System*” maintained by the General Services Administration.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

31 US Code, Chapter 38 covers claims that are made by individuals knowing that those claims are false, fictitious or fraudulent and may include written statements that are false, fictitious or fraudulent, omits material information or is in payment of services or property that was not received. Fines, penalties and potential debarment is outlined based on specific facts of each occurrence.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

18 US Code, Chapter 31 covers the various types of embezzlement and theft that could occur and the fines and penalties associated if convicted of such acts. Sections that would be most applicable to your work with RESTORE, NFWF and NRDA projects would be public money, property or records (section 641), false statements (section 1001), false, fictitious or fraudulent claims (section 287), false claims (section 3729). In general, each of these sections defines what acts are covered and thresholds for application.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

18 US Code, Chapter 41, Section 874 and 40 US Code, Section 276c “Copeland Anti-Kickback Act” covers force, intimidation, threats or other acts against employees performing construction work funded all or in part by federal dollars to relinquish part of their compensation. It requires contractors to provide wage records on a weekly basis indicating compliance with wages being paid. All contractors and sub-contractors and covered under both regulations.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- Applicable environmental laws (including but not limited to):
 - Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as the Superfund, was established to respond to any actual or threatened release of hazardous substances into the environment that could be a danger to the public. It is funded through a tax on chemical and petroleum companies.
 - National Historic Preservation Act of 1966 provides protection for historical and cultural buildings, lands, etc. that meet national historic landmark criteria and requires their preservation.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- Applicable environmental laws (including but not limited to):
 - National Environmental Policy Act of 1969 requires all federal actions take into consideration how those actions may affect the environment. It requires environmental assessments and environmental impact statements be performed before any project is started.
 - Clean Water Act objective is to restore and maintain the integrity of our water through the regulation of pollutants that is put into navigable waters and to work towards the highest standards of water quality, including the treatment and management of waste. It also strives to research ways to reduce pollutants that could harm our waters.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- Applicable environmental laws (including but not limited to):
 - Endangered Species Act of 1973 works to provide ecosystems for threatened and endangered species. It provides the authority to acquire land for conservation and the establishment of grants to states to maintain programs for endangered and threatened wildlife and plants.
 - Solid Waste Disposal Act, Section 6002 regulates the procurement of items greater than \$10,000 with the highest percentage of recovered materials while still maintaining competition. See also 2 CFR 200.322 “Procurement of Recovered Materials”. Recovered materials are defined as waste materials and by-products recovered or diverted from solid waste.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- Applicable environmental laws (including but not limited to):
 - Statutory provisions (Title VI of the Civil Rights Act, Age Discrimination Act, Americans with Disabilities Act, ADA requirements, etc.) requires that no person should be discriminated against based on race, color, national origin, handicap, age, religion or sex. Recipients are required to follow all provisions and include the provisions in any sub-contract awards.



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- What are your responsibilities over laws and regulations?
 - Take advantage of monthly or weekly meetings with MDEQ personnel to ask questions regarding the possible applicability of a specific law or regulation or the application of a known requirement
 - Internal monitoring of compliance with an applicable law or regulation and maintaining support to show that compliance
 - Reporting compliance to MDEQ



What Can You Do to Deter Fraud, Waste and Abuse

Knowledge of applicable laws and regulations

- What if my project is not subject to federal regulations?
 - Where practicable and appropriate, MDEQ applies the same or similar requirements for all projects, regardless of whether they are federally funded or not.
 - NFWF and NRDA projects funded through MDEQ are not federal funds, and therefore are not subject to the same requirements of a federally-funded program (i.e. the RESTORE Act), they do have their own individual requirements specific to their program



What Can You Do to Deter Fraud, Waste and Abuse

Risk Mitigation

- What are ways you can mitigate your risks of fraud, waste and abuse?
 - Obtain a third-party audit
 - Implement segregation of duties controls to the greatest extent possible (including cross-training and job rotation)
 - Keep lines of communication open between management and employees so that you know what is going on at all times
 - Report all conflicts of interest (fact and appearance) immediately to MDEQ
 - Ensure computers, files and other assets are safeguarded and secure



What Can You Do to Deter Fraud, Waste and Abuse

Risk Mitigation

- What are ways you can mitigate your risks of fraud, waste and abuse?
 - Stress the ethical conduct of all employees
 - Increase understanding of common fraud schemes such as:
 - Conflict of interest
 - Bribery
 - Fraudulent disbursements
 - Misuse of inventory

- The Association of Certified Fraud Examiners 2016 Global Fraud Study disclosed the majority of FWA occurs in billing (27.8%), corruption (24.9%), skimming (16.1%) and expense reimbursements (15.8%)



What Can You Do to Deter Fraud, Waste and Abuse

Insurance Coverage

Carefully review your insurance coverage to determine that if fraud, waste and abuse is perpetrated by a member of management or an employee, that you are unaware of, you are covered. MDEQ has minimum requirements for coverage that include workers' compensation and employer's liability, comprehensive general liability and errors and omissions/professional liability, but as the recipient of the funds it is your responsibility to ensure that you can recover and continue to operate in order to complete your scope of work should FWA be discovered.



What Can You Do to Deter Fraud, Waste and Abuse

Contractor Oversight

Each subrecipient of project funding dollars has the responsibility to ensure contracts entered into by them contain the same requirements as the original agreement between the subrecipient and MDEQ. It is your responsibility to monitor your contractors to ensure that fraud, waste and abuse is not taking place and to report any suspected acts of fraud, waste and abuse that you are aware of to MDEQ.

All contracts entered into by a subrecipient/contractor must be approved by MDEQ in writing (as required by your agreement) and be with vendors that are qualified to perform the approved work and are authorized to work in the State of Mississippi.



What Can You Do to Deter Fraud, Waste and Abuse

Training and Education

- Group training covering applicable laws and regulations and compliance issues
 - 2 CFR part 200
 - RESTORE Act terms and conditions
 - Statutory provisions (Title VI of the Civil Rights Act, ADA Requirements, etc.)
- In-house training over adopted policies and procedures
- Have MDEQ tailor a training course for you based on your specific needs



What Can You Do to Deter Fraud, Waste and Abuse

Document Retention

- What is Required?
 - Record retention is required by MDEQ for a period of 10 years beginning on the last day of the period of performance.
 - If litigation has occurred during the period of performance or record retention period, records are required to be retained beyond the 10 period until the litigation has been resolved.
 - Record retention extends to all contractors.



What Can You Do to Deter Fraud, Waste and Abuse

Document Retention

- What Can You Do to Deter Fraud, Waste and Abuse?
 - Files should be locked in a secure location with only authorized personnel allowed access
 - Electronic files should be secured using computers with password protection and in some cases encrypted files
 - Any documents containing sensitive information should be disposed of by shredding or another similar process to prevent unintended access to sensitive information



What to Expect During Monitoring

MDEQ's goal is to identify any potential instances of FWA during all phases of monitoring. This may include:

- Desk reviews
- Site visits
- Technical assistance
- Ongoing compliance period monitoring
- Communication and reporting



What to Expect During Monitoring

Desk Reviews

- Financial Review
 - Sample and test a cross section of financial information including:
 - Pay application and/or invoice
 - Procurement
 - Program income
 - Travel
 - Audits (third-party financial statement audits and audits in accordance with OMB Uniform Guidance)
 - Sample size is influenced by the size and complexity of the project



What to Expect During Monitoring

Desk Reviews

- Program Review
 - Includes a review of MDEQ project files to ensure program requirements are met including:
 - Required status meetings
 - Monitoring of contractors by subrecipients
 - Construction using federal funds
 - Land acquisitions
 - Insurance coverage
 - Reporting
 - Compliance periods



What to Expect During Monitoring

Desk Reviews

➤ Contract Specific Reviews

Monitoring checklists will be tailored to specific agreement requirements, amendments and scope of work. This includes:

- Budgets
- Progress narratives
- Project specific laws and regulations
- Requirements for RESTORE funding (Direct Component vs. Centers of Excellence Research Grants Program)
- Requirements for NRDA and NFWF funding (federal agencies, natural resource trustees and the National Fish and Wildlife Foundation)



What to Expect During Monitoring

Site Visits

While on-site the monitoring staff may make inquiries over any known or suspected fraud, waste and abuse, which may include interviewing employees and management.



What to Expect During Monitoring

Technical Assistance

The goal is to provide project management with as much information as possible to help get your project right the first time. This includes advice and guidance over policies and procedures, reporting and any other questions you may have.



What to Expect During Monitoring

Ongoing Compliance Period Monitoring

Projects may include a period of compliance as part of their agreement with MDEQ. The monitoring staff will continue to monitor applicable requirements throughout the compliance period. Fraud, waste and abuse can happen during any phase of the project. MDEQ's responsibilities to monitor and your responsibilities to report FWA extend until the end of any agreed upon period of compliance.



What to Expect During Monitoring

Communication and Reporting

During the course of project monitoring, communication and reporting between applicable parties and MDEQ will be required. This may include: communications with project representatives regarding information they are reviewing, giving project management an opportunity to respond to questions and reporting any findings directly to MDEQ management.



What If You Find or Suspect FWA?

You have an ethical responsibility to report any suspected fraud, waste or abuse. This could include (but not limited to):

- Violations of laws and regulations
- Non-compliance of RESTORE Act terms and conditions
- Conflicts of Interest
- Circumventing internal controls
- Suspicious accounting practices

If you have witnessed a suspicious activity and are unsure if it is FWA, it is always better to report. It is better to be safe than sorry!



What If You Find or Suspect FWA?

What should you do?

- Ask for an explanation for any irregular activities – there could be a reasonable explanation for the activity
- If possible, make copies of the documentation or write a description of the irregular activity including names, dates, events and any other relevant information
- Report any concerns or suspicions to management. If you are uncomfortable with speaking to management contact MDEQ directly



What If You Find or Suspect FWA?

Do you have protection?

Yes! If you have received federal funds the Whistleblower Protection Act applies to you. This Act was extended indefinitely by Congress in 2016 to protect government contractors, sub-contractors, grantees, sub-grantees and personal service contractors. This protection covers:

- Gross mismanagement
- Abuse of authority
- Public health
- Safety dangers
- Violations of laws and regulations
- Gross waste of federal funds

➤ More information about the Whistleblower Protection Act can be found at www.osc.gov



What If You Find or Suspect FWA?

- Contact your MDEQ project coordinator
- Contact the U.S. Department of Treasury for RESTORE projects
 - ❑ Phone at 1-855-584-GULF (4853)
 - ❑ Email at GulfCoastRestorationHotline@oig.treas.gov
 - ❑ Submit online at www.treasury.gov/services/restore-act
- Contact the Mississippi Office of the State Auditor
 - ❑ Phone at 1-800-321-1275
 - ❑ Email at complaint@osa.ms.gov
 - ❑ Submit online at <http://www.osa.ms.gov/fraud/>



What Happens If FWA is Reported?

Upon receiving a report of FWA, MDEQ will follow the adopted fraud, waste and abuse policy procedures. Those procedures may include (but are not limited to):

- Interview the individual who reported the allegation
- Review provided supporting documentation relevant to the allegation
- Interview others that may lend additional knowledge regarding the allegation
- Contact the subrecipient, contractor, etc. and request access to documents to support or explain the alleged actions
- Report to MDEQ management and the recipient results of the investigation



What if Fraud, Waste and Abuse Is Confirmed?

➤ Fines and penalties

- 31 US Code, Chapter 38 “Administrative Remedies for False Claims and Statements” (fines up to \$5,000)
- 18 US Code, Chapter 31 “Embezzlement and Theft” (fines and up to 10 years imprisonment)
- 18 US Code, Chapter 41, Section 874 “Kickbacks from Public Works Employees” (fines and up to 5 years imprisonment)
- Mississippi Code Title 97 “Crimes” (fines and penalties vary, for example, Chapter 11 “Embezzlement” is up to \$5,000 and up to 10 years imprisonment)



What if Fraud, Waste and Abuse Is Confirmed?

- Repayment of funds
- Ban from receipt of future funds (debarment, suspension)
- Future effect on business operations
- Loss of reputation



What Are the Benefits of Reporting FWA?

- If MDEQ or other state agencies see your proactive approach to FWA through your actions, policies and communications with officials, this could enhance your organizations' reputation of integrity and credibility.
- Reporting potential fraud, waste and abuse could save MDEQ significant amounts of financial resources. That savings can go on to fund additional projects and provide future bid opportunities.
- Most importantly, resources saved through the prevention or reporting of FWA and subsequently used not only helps restore our coast but makes it better for generations to come.



Harper, Rains, Knight & Company



Questions?