

## REPORT HIGHLIGHTS PERFORMANCE AUDIT

### Our Conclusion

The Department of Environmental Quality (Department) monitors and enforces regulated facilities' compliance with environmental laws and regulations to control or prevent the release of contaminants into the environment that may have negative effects on the public's health. Regulated facilities include power plants, wastewater treatment plants, dry cleaners, construction equipment, and other portable pollution sources. Although the Department monitors compliance by conducting inspections of regulated facilities, it can more effectively protect public health and the environment by targeting inspections of facilities based on risk. Additionally, the Department needs to take more consistent, timely, and effective enforcement actions.



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## Department can more effectively target inspections

**Department monitors and enforces compliance with environmental laws and regulations**—Department staff are responsible for ensuring that regulated facilities are following all applicable environmental laws and regulations. Compliance monitoring and enforcement help control or prevent the release of contaminants into the environment that may affect public health. The Department monitors compliance through various types of inspections. Between fiscal years 2006 and 2012, the Department conducted nearly 26,000 inspections.

**Department shares responsibility with the EPA for regulating federal environmental programs**—The Department shares regulatory responsibility with the U.S. Environmental Protection Agency (EPA) for several environmental programs addressing air, water, and solid and hazardous waste. The Department negotiates monitoring agreements with the EPA for these programs based on federal guidance and policy, which include recommended inspection frequencies.

**Department typically inspects similar types or categories of facilities with same frequency**—The Department's strategy for scheduling routine inspections, which is mostly dictated by its monitoring agreements with the EPA, is to inspect all facilities of the same type or category with the same frequency, regardless of risk. For example, every public drinking water system that gets water from a surface source, such as a reservoir, is inspected every 2 years. Although this inspection approach satisfies EPA inspection requirements, it results in similar rates of inspections for compliant facilities, which may pose lower risks to public health and the environment, and for less compliant facilities, which may pose higher risks to public health and the environment.

This inspection approach may also lead to a high rate of inspections for facilities that are consistently compliant. For example, between fiscal years 2006 and 2011, the Department conducted four or more inspections each at 358 facilities where it did not identify any violations. These 358 facilities represented 5 percent of the facilities inspected during this period but accounted for 14 percent of the total inspections the Department conducted.

**Targeting inspections toward riskiest facilities increases efficiency and effectiveness**—Targeting inspections based on various risk factors can lower compliance-monitoring costs while increasing the effectiveness of inspections by focusing inspection efforts on the facilities most likely to violate regulations. Additionally, targeting inspections based on violations history and other risk factors offers facilities a positive incentive to follow regulations by allowing them to receive reduced regulatory oversight, including fewer inspections, if they remain compliant and take other steps to minimize their risk of violations.

### Types of department inspections

**File reviews**—In-office reviews of reports and records on a facility's emissions, discharges, and compliance history.

**Onsite inspections**—Visits to the regulated facility to assess its compliance with the terms of its permit and/or environmental laws and regulations.

**Complaint inspections**—Investigations of regulated facilities in response to citizen complaints.

Although the EPA has been reluctant in the past to approve department deviations from inspection frequencies recommended in federal guidance and policy, EPA officials from the western region, which covers Arizona, stated that they will consider alternative approaches based on local priorities and goals. Therefore, the Department should request that the EPA collaborate with it to develop a framework for implementing a risk-based inspections approach. Further, for the programs where the Department implements a risk-based inspections approach, the Department should develop and implement policies and procedures for assessing the effectiveness of the risk-based inspections approach.

### Recommendation

The Department should request that the EPA collaborate with it to develop a framework for a risk-based inspections approach, which will allow it to focus its inspection activities toward facilities that pose the greatest risk to public health and the environment.

## Department does not consistently take timely and effective enforcement actions

**Enforcement notices not always issued within department timeline**—Although effective and timely enforcement deters or discourages violations, the Department has not consistently met its own time frames for issuing enforcement action. For example, although notices of corrective action and notices of violation should be issued within 45 days of inspection, 80 percent of the notices issued to hazardous waste facilities between fiscal years 2006 and 2011 were late, taking 78 days to issue, on average. Compliance managers indicated that the reason for the delays is the multi-level process for approving notices, but they are developing a more streamlined approval process.

**Department not ensuring facilities return to compliance within deadlines**—The Department gives facilities specific deadlines to address violations and return to compliance. However, 45 percent of the 5,840 enforcement cases from fiscal years 2006 through 2011 did not meet the Department's compliance deadlines. Department staff attributed the delays to reduced staffing, which limited their ability to monitor facility efforts to return to compliance.

Of particular concern are drinking water systems. The Department prioritizes enforcement of water systems with the most systemic noncompliance with a goal of returning them to compliance within 6 months. In August 2012, 25 of the 79 water systems identified as enforcement priorities had not returned to compliance for more than 1 year. This, too, was attributed to limited availability of department enforcement staff. Additionally, department staff indicated that small water systems may lack the money to purchase equipment to address compliance issues.

**Department infrequently escalated enforcement when compliance deadlines not met**—Department policy calls for escalating enforcement action when facilities miss deadlines, but it seldom does so. When the Department escalates enforcement, it usually is in the most serious cases. Department managers explained that policies and procedures regarding enforcement escalation are too rigid and do not provide for professional judgment. However, the Department undermines its credibility as a consistent and fair regulator, and reduces its ability to deter noncompliance when it fails to enforce deadlines and escalate enforcement.

### Recommendations

The Department should:

- Notify facilities in a timely manner about their violations and how to resolve them;
- Implement a corrective action plan that addresses the main barriers to providing effective assistance to noncompliant facilities; and
- Develop and adhere to more effective policies for escalating enforcement action.