



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

September 21, 2021

Lindsey A. Perry  
Auditor General  
2910 N. 44<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85018-7271

Dear Ms. Perry:

This letter provides the Arizona Department of Environmental Quality's (ADEQ) response to the September 14, 2021 revised preliminary draft of the department's Sunset Factors report. We appreciate the diligence and hard work of the Auditor General's staff in completing this report and their consideration of our feedback on the previous draft.

The auditors identified 13 recommendations for improvement the department should address. Specifically:

**Finding 1:** Department did not comply with some conflict-of-interest requirements, increasing risk that employees and public officers had not disclosed substantial interests that might influence or could affect their official conduct

**Recommendation 1:** The Department should continue to implement its updated conflict-of-interest policies and procedures to help ensure it complies with State conflict-of-interest requirements and follows recommended practices, including:

**Recommendation 1a:** Requiring all employees and public officers to complete a conflict-of-interest disclosure form upon hire and annually, including attesting that no conflicts exist, if applicable.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: As of September 16, 2021, all full-time and temporary employees have signed an ADOA-authorized conflict of interest form according to our updated policy. We have also created standard work to require disclosure forms annually from all full-time employees, temporary employees, and ADEQ statutory committees in December.

**Recommendation 1b:** Using a conflict-of-interest disclosure form that addresses both financial and decision-making conflicts of interest.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: ADEQ has updated the conflict of interest form to match that of ADOA.

**Recommendation 1c:** Storing all substantial interest disclosures in a special file.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: All forms are now stored with the Department's Human Potential Office in special files designated for conflict of interest disclosures.

**Recommendation 1d:** Establishing a process to review and remediate disclosed conflicts.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Department now has an established process for remediating disclosed conflicts through our Human Potential Office.

**Recommendation 2:** The Department should continue to provide periodic training on its conflict-of-interest requirements, process, and form, including providing training to all employees and public officers on how the State's conflict-of-interest requirements relate to their unique program, function, or responsibilities.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: New employees will be provided conflict of interest training during new employee orientation and all employees will be provided annual conflict of interest training each December, pursuant to ADEQ policy.

**Sunset Factor 2:** The extent to which the Department has met its statutory objective and purpose and the efficiency with which it has operated.

**Recommendation 3:** The Department should create a written action plan that prioritizes the development and implementation of IT security policies and procedures required by ASET and recommended by credible industry standards. The action plan should include specific tasks and

their estimated completion dates, as well as a process for regularly reviewing and updating the plan based on its progress.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: ASET uses RiskSense software statewide to assess security performance of Arizona agencies. ADEQ's RiskSense security score is 807 and has been over 800 since January 2019. The current statewide security score as of August 1st is 719. (The statewide goal is 725). Of the 15 security controls that ADOA currently tracks, we are green on 14 of them. The one that is not green is the annual network risk assessment that we are currently scheduling but have not completed yet.

**Recommendation 4:** The Department should develop and implement IT security policies and procedures consistent with its action plan, ASET requirements, and credible industry standards.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Sunset Factor 4:** The extent to which rules adopted by the Department are consistent with the legislative mandate.

**Recommendation 5:** The Department should work with its Assistant Attorney General to determine whether and when it can develop and adopt rules as required by statute.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Sunset Factor Report references Nonpoint Source Rules and Solid Waste Rules. For nonpoint source rulemaking, the Department does not believe it has funding with an authorized use for this purpose (see ARS 49-210(D)). For Solid Waste Rules, ADEQ was not successful in a previous attempted to promulgate rules. In early 2009, ADEQ completed an extensive rule writing and stakeholder process to develop comprehensive solid waste rules addressing all statutorily mandated solid waste rule topics. However, the State's rule moratorium became effective in 2009 and the effort was never completed. Since then, a number of factors have metered the Department's capacity to write new rules: 1) limited resources; 2) the need to prioritize rules to prevent increased human health and environmental risk (e.g. biomedical waste rules in progress, hazardous waste rules finalized in 2020); 3) the need to prioritize rulemaking for air quality planning to avoid federal sanctions including the loss of federal highway dollars; and 4) the need to prioritize rulemaking that is required to maintain ADEQ primacy and delegation of federal programs.

**Recommendation 6:** The Department should, contingent on receiving an exemption to the rule-making moratorium, adopt rules as required by statute.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: Since 2015, ADEQ has conducted 26 rulemakings, including 256 rules that have been improved, 83 rules that were no longer necessary and allowed to expire, and 14 rules that were likewise no longer necessary and were repealed. ADEQ has strategically prioritized rulemaking as described above and will continue to reduce regulatory burden where possible and to write and implement rules to protect human health and the environment when authorized by law.

**Sunset Factor 5:** The extent to which the Department has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

**Recommendation 7:** The Department should continue to implement the revisions to its rulemaking policies and procedures to ensure the public receives the full 30 days to submit written comments after publishing the notice of a proposed rulemaking.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: ADEQ has conducted 26 rulemakings since 2015, and to our knowledge, only one public comment period had an incorrect printed date. Although the published notice period was less than 30 days in the single incident cited, ADEQ notified its stakeholders and accepted comment for the full 30 days. ADEQ now has multiple redundancies in place to ensure this will not happen again.

**Recommendation 8:** The Department should make public meeting minutes, or a recording of these public meetings, available for public inspection within 3 working days following a meeting.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Sunset Factor 6:** The extent to which the Department has been able to investigate and resolve complaints that are within its jurisdiction and the ability of the Department to timely investigate and resolve complaints within its jurisdiction.

**Recommendation 9:** The Department should respond to complainants within 5 business days of assigning the complaint to staff for investigation, as required by Department policy.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: In FY 2020 and 2021, ADEQ received 851 and 900 complaints, respectively, and responded to complainants within 5 days, 79 and 85 percent of the time, respectively. In FY 22 so far, 81% of complaints have been responded to in 5 days or less with an average of 1.8 days to respond. To continue improving, ADEQ is implementing additional goals and protocols to accelerate complaint response.

**Recommendation 10:** The Department should investigate and resolve complaints within 180 days by developing and implementing policies and procedures for complaint investigation and resolution, including guidance for prioritizing complaints for investigation and time frames for completing the various steps in the complaint resolution process, such as assigning complaints to staff and completing complaint investigations.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: See response explanation to recommendation 9.

**Recommendation 11:** The Department should respond to comments regarding the VEIP within 2 business days, and ensure comments are closed within 2 business weeks, as required by Department policy.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

**Recommendation 12:** The Department should develop and implement guidance for referring VEIP comments to other agencies, including guidance on when supervisory review is required before comments are referred to other agencies.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: We are aware of only one comment out of approximately 2,500 that was referred inappropriately to another agency (ADOT–MVD) from January 2016 through July 2021.

**Recommendation 13:** The Department should continue to implement its new policy and procedure for reviewing and documenting its review of comments received by the VEIP contractor.

Department response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

On behalf of ADEQ, we appreciate having had this opportunity to respond to the above recommendations. Moreover, we appreciate the professionalism and cooperation your audit team demonstrated in working with us throughout the performance audit process. We found the process and the results to be both constructive and informative, and we look forward to timely implementation of all the recommendations identified in your audit report.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Cabrera', with a stylized flourish at the end.

Misael Cabrera, P.E.  
Director