STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

MELANIE M. CHESNEY
DEPUTY AUDITOR GENERAL

June 13, 2014

The Honorable John Allen, Chair
Joint Legislative Audit Committee

The Honorable Chester Crandell, Vice Chair
Joint Legislative Audit Committee

Dear Representative Allen and Senator Crandell:

Our Office has recently completed an initial followup of the Department of Environmental Quality—Compliance Management regarding the implementation status of the 12 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in March 2013 (Auditor General Report No. 13-01). As the attached grid indicates:

- 1 has been implemented; and
- 11 are in the process of being implemented.

Our Office will conduct a 24-month followup with the Department on the status of those recommendations that have not yet been fully implemented.

Sincerely,

Dale Chapman, Director
Performance Audit Division

DC:ss
Attachment

cc: Henry Darwin, Director
Department of Environmental Quality

2910 NORTH 44th STREET • SUITE 410 • PHOENIX, ARIZONA 85018 • (602) 553-0333 • FAX (602) 553-0051

Department of Environmental Quality—Compliance Management
Auditor General Report No. 13-01
Initial Follow-Up Report

Recommendation	Status/Additional Explanation
Finding 1: Department can more effectively target inspections to protect public health and the environment	
1.1 The Department should request that the EPA collaborate with it to develop a framework for implementing a risk-based inspections approach to ensure that such an approach meets the terms of its EPA agreements. The framework may vary by environmental program.	**Implementation in process** In June 2013, the Department's Water Quality Division (Division) proposed a framework for a risk-based inspections approach to the EPA for one of its largest EPA-delegated environmental programs, the Arizona Pollutant Discharge Elimination System. The EPA did not approve this framework. However, according to the Department, the EPA's only concern with the framework regarded the Department's proposed minimum inspection frequency for some facilities. According to the Department, the Division will implement most of the provisions in the framework while continuing to work with the EPA to address its concerns regarding inspection frequency. In fiscal year 2014, the Department's Waste Programs Division requested that the EPA continue to allow it to participate in an EPA initiative to exchange some routine inspections of facilities generating large quantities of hazardous waste for inspections of facilities generating small quantities of hazardous waste. In its application to the EPA, the Department stated that the smaller generators should be inspected more frequently because they posed a greater risk for noncompliance and, thus, posed a greater risk to human health and the environment. The EPA approved the Department's request. The Department's Air Quality Division entered into an EPA agreement for compliance inspections of its largest facilities in fiscal year 2011 that expires on September 30, 2015. The agreement commits the Department to inspecting all of the facilities identified in the agreement annually. According to the Department, it will begin negotiating a new agreement with the EPA early in calendar year 2015, and it plans to request collaboration for implementing a risk-based approach at that time.

Recommendation	Status/Additional Explanation
1.2 For environmental programs where the Department and the EPA have developed a framework for implementing a risk-based inspections approach, and for those programs where there is no EPA oversight, the Department should:	
a. Develop standard criteria for assessing individual facility risk, and average risk by facility type and environmental program;	**Implementation in process** The Department's Water Quality Division has developed a framework for risk-based inspections for one of its largest EPA-delegated environmental programs (see Recommendation 1.1). The framework includes standard criteria for assessing individual facility risk. Additionally, department management stated that the Division plans to develop similar frameworks for its other EPA-delegated programs, as well as the Aquifer Protection Permit Program—a state program with no EPA oversight—during calendar year 2014. Further, department staff stated that the Division has started using criteria the EPA developed to identify public drinking water systems with "outstanding performance" that may pose lower risks to public health and the environment. Under federal regulations, such facilities are eligible for reduced inspection frequency (see Recommendation 1.2b). However, the Division has not developed criteria for assessing average risk by facility type or environmental program. According to department staff, the Department's Waste Programs Division uses a variety of criteria to assess the risk of individual facilities and facility types. However, it has not yet formalized this criteria in written form, and it has not yet documented policies or procedures to guide staff in using the criteria to assess risk. Additionally, the Waste Programs Division has not yet documented criteria for assessing average risk by environmental program. The Department's Air Quality Division developed a draft risk-assessment tool designed to identify smaller facility types that may pose a greater risk to human health and the environment and, thus, may need to be inspected at the same frequency as larger facilities. This tool assesses risk based on the emitted pollutants' toxicity and amount. However, the tool does not apply to larger facilities, which the Department inspects annually. According to the Department, it cannot reduce the inspection frequency of the larger facilities until it negotiates a new EPA agreement for compliance inspections in calendar year 2015 (see Recommendation 1.1). Additionally, the Air Quality Division has not yet documented criteria for assessing individual facility risk or average risk by environmental program.

Recommendation	Status/Additional Explanation
b. Increase the inspection frequency of facilities identified as higher risk and decrease the inspection frequency of facilities identified as lower risk; and	**Implementation in process** In fiscal year 2014, as part of the risk-based inspections framework it proposed to the EPA for one of its largest EPA-delegated environmental programs (see Recommendation 1.1), the Department's Water Quality Division (Division) increased the inspection frequency of facilities identified as higher risk and decreased the inspection frequency of facilities identified as lower risk. Additionally, department management stated that the Division plans to develop similar frameworks for its other EPA-delegated programs, as well as the Aquifer Protection Permit Program—a state program with no EPA oversight—during calendar year 2014. Further, department staff stated that the Division has begun using a provision in federal regulations allowing the Department to reduce the inspection frequency of some public drinking water systems deemed to have "outstanding performance" that may pose a lower risk to public health and the environment. In fiscal year 2014, as part of an EPA initiative to exchange some routine inspections of facilities generating large quantities of hazardous waste for inspections of facilities generating small quantities of hazardous waste (see Recommendation 1.1), the Waste Programs Division conducted inspections of some facilities that generate smaller quantities of hazardous waste. Additionally, according to department staff, the Waste Programs Division increased the inspection frequency of some facilities in its solid waste program—a state program with no EPA oversight—because they have not been inspected for several years and, thus, pose a greater risk of noncompliance. However, the Waste Programs Division has not yet formalized its risk-assessment criteria or developed policies, procedures, or other guidance outlining how staff should conduct risk assessments or adjust inspection frequencies based on the results of the assessments. Further, the Waste Programs Division did not provide complete documentation to show that it decreased the inspection frequency of lower-risk facilities that generate larger quantities of hazardous waste as part of the EPA initiative. The Air Quality Division has not increased or decreased the inspection frequency of any facilities since the end of the audit. However, according to the Department, when the Air Quality Division begins negotiations on a new EPA inspections agreement in calendar year 2015 (see Recommendation 1.1), it will use its risk-assessment tool (see Recommendation 1.2a) to identify smaller facilities that pose a higher risk and, thus, should be inspected at the same rate as larger facilities. Additionally, although the risk-assessment tool does not allow for risk assessment of larger facilities, the Department reported that it will

Recommendation	Status/Additional Explanation
	negotiate with the EPA to apply a risk-based approach to its larger facilities.
c. Develop and implement policies and procedures for assessing the effectiveness of the risk-based inspections approach, including developing and implementing performance measures, establishing baselines, tracking facility compliance performance against the measures over time, and modifying the risk-based inspections approach as needed.	**Implementation in process** The Department has not yet provided any policies, procedures, or other guidance to explain how risk-based inspections approaches will be adjusted or modified in response to performance data. However, as part of the risk-based inspections framework it proposed to the EPA for one of its largest EPA-delegated environmental programs (see Recommendation 1.1), the Department's Water Quality Division will use two department-wide performance measures—facilities in compliance at the time of inspection, and return to compliance time frame—to assess the effectiveness of its risk-based inspections approach. Additionally, it will further assess its approach by measuring the overall compliance rate of its regulated facilities based on self-monitoring data facilities provide to the Department. However, it has not yet developed policies outlining how it will use these measures to evaluate the effectiveness of its approach. According to department staff, the Department's Air Quality and Waste Programs Divisions will use the two department-wide performance measures described above to assess the effectiveness of their inspections approaches. However, the Department has not yet developed any policies, procedures, or other written guidance stating how the divisions will do so.

Recommendation	Status/Additional Explanation
1.3 In order to enhance its implementation of a risk-based inspections approach, the Department should:	
a. Conduct a small number of random inspections of facilities that have had inspection frequencies reduced or eliminated to continue to provide deterrence and monitor for possible violations among these facilities;	**Implementation in process** In fiscal year 2014, as part of the risk-based inspections framework it proposed to the EPA for one of its largest EPA-delegated environmental programs (see Recommendation 1.1), the Department's Water Quality Division (Division) conducted random inspections on facilities not originally on its annual inspections list for the fiscal year. Additionally, department management stated that the Division plans to develop a similar framework for the Aquifer Protection Permit Program, a state program with no EPA oversight. According to the Department, the Waste Programs Division has not conducted random inspections on any of the facilities for which it has decreased inspection frequency. The Department reported that it has reduced the inspection frequency of 20 hazardous waste facilities, and it does not believe adding a small number of random inspections to these facilities provides value relative to the resources needed to conduct the inspections. Additionally, the Department reported that it has not reduced the inspection frequency of facilities in its solid waste program. The Air Quality Division has yet to decrease the inspection frequency of any facilities.
b. Use all available facility self-monitoring data to help assess the facilities' violations history;	**Implementation in process** The Department reported that it is evaluating its data sources and how best to utilize that data to assess violations history.
c. Continue its efforts to fix or replace the Wastewater Compliance and Enforcement Tracking System database to ensure accurate violations reports based on self-monitoring data in the wastewater programs; and	**Implementation in process** In fiscal year 2014, the Department completed several fixes to the Wastewater Compliance and Enforcement Tracking System database, and the reports the database generates have improved. The Department plans to have all of the system fixes completed in calendar year 2014.

Recommendation	Status/Additional Explanation
d. Develop standardized data reports from its compliance and enforcement data to assist department staff in assessing risk as well as measuring the impact of its inspections and enforcement activities.	**Implementation in process** The Department reported that it is evaluating its data sources and determining how best to use the data to assess its performance. Additionally, the Department developed two standardized data spreadsheets that allow staff to assess whether or not its environmental programs are meeting or exceeding the baseline and 5-year goal for two of the Department's performance measures for compliance management: facilities in compliance at the time of inspection and return to compliance time frame.
Finding 2: Department does not consistently take timely and effective enforcement actions	
2.1 The Department should continue to assess and expand the use of field-issued enforcement for programs that do not require a detailed review of violations in order to issue enforcement actions in a timely manner. In addition, the Department should update its policies and procedures to ensure the process is effectively implemented.	**Implemented at 12 months**
2.2 The Department should develop and implement a corrective action plan that addresses the main barriers to providing effective assistance to noncompliant facilities, including reduced staff resources, and identifies the types of assistance it can provide to better assist noncompliant facilities return to compliance.	**Implementation in process** Although it has not developed a corrective action plan, the Department began identifying the most common violations department-wide, by division and by environmental program, in an effort to develop specific compliance assistance activities that can help address these violations.

Recommendation	Status/Additional Explanation
2.3 The Department should identify the root cause of violations for the small water systems, consult with other states that face similar issues to determine how they are addressing noncompliance and if it is working, and develop an effective plan to address the noncompliance.	**Implementation in process** Based on conversations with small water system operators and staff at other state agencies that deal with public water systems, such as the Arizona Corporation Commission, the Department identified the lack of funding as the root cause of most small water system violations. Additionally, the Department surveyed other states' drinking water administrators to determine how they are addressing noncompliance and if their approaches are working. According to department staff, the survey results suggested that the other states that responded do not have comprehensive approaches for addressing violations for small water systems. In November 2013, the Department convened a multiagency team to develop strategies for achieving and maintaining small water system compliance. The team included representatives from other state and county agencies as well as EPA Region 9. According to department staff, this team's work is ongoing. However, department staff stated that the team has already identified several initiatives to address small water system noncompliance, including initiating and formalizing frequent communication and cooperation between the Department and the Rural Water Association of Arizona, county boards that oversee domestic water improvement districts, the Arizona Corporation Commission, and the Water Infrastructure Finance Authority. Additionally, according to department staff, the Department has begun notifying certified operators of public water systems of potential monitoring violations rather than just notifying the system owner in an effort to have the violations addressed more quickly.
2.4 The Department should make a determination on how best to handle escalation in Arizona and align its policies and procedures with that strategy. Further, the Department should then consistently adhere to its policies and procedures for escalated enforcement to help return facilities to compliance in a timely fashion and help ensure that public health and the environment are protected.	**Implementation in process** The Department reported that it began restructuring its internal procedures for escalated enforcement, which will include an evaluation of the potential risk to the environment if the noncompliance is not corrected. As part of this process, the Department developed draft procedures for escalating enforcement actions and revised several formal enforcement documents, such as compliance and consent orders, case settlement memorandums, and memorandums used to refer cases to the attorney general.