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June 13, 2016

The Honorable John Allen, Chair  
Joint Legislative Audit Committee

The Honorable Judy Burges, Vice Chair  
Joint Legislative Audit Committee

Dear Representative Allen and Senator Burges:

Our Office has recently completed a 30-month followup of the *Department of Environmental Quality—Sunset Factors* regarding the implementation status of the 8 audit recommendations (including sub-parts of the recommendations) presented in the performance audit report released in September 2013 (Auditor General Report No. 13-10). As the attached grid indicates:

- 3 have been implemented;
- 1 has been partially implemented;
- 3 are in the process of being implemented; and
- 1 is not yet applicable.

Our Office will conduct a 42-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

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Attachment

cc: Misael Cabrera, Director  
Arizona Department of Environmental Quality

# Department of Environmental Quality—Sunset Factors

## Auditor General Report No. 13-10

### 30-Month Follow-Up Report

Recommendation	Status/Additional Explanation
<p><b>Sunset factor #2</b>    <b>The extent to which the Department has met its statutory objective and purpose and the efficiency with which it has operated.</b></p>	
<p>1. The Department should track renewals of Aquifer Protection Permit (APP) general permit coverage. Additionally, it should:</p> <p style="margin-left: 20px;">a. Notify permittees in writing when their coverage is coming due for renewal;</p> <p style="margin-left: 20px;">b. Identify any entities with expired APP coverage, determine if they are still operating in a manner that requires a permit, and notify them of their duty to submit a new application for coverage or face enforcement action for operating without a permit; and</p>	<p><b>Implemented at 30 months</b></p> <p><b>Implemented at 30 months</b></p> <p><b>Partially implemented at 30 months</b>            In March 2015, the Department developed and tested a pilot procedure for identifying and notifying entities with expired APP coverage, and determining if the entities are still operating in a manner that requires a permit. The Department identified more than 125 facilities with permit coverage that had expired since fiscal year 2006, the first year for which it had available data. It then sent letters to 40 entities with coverage that had expired during the 2 years prior to the pilot. The letters notified the entities that their APP general permit coverage had expired and requested that the entities either reapply for coverage, provide the Department with written notification of facility closure and closure verification, or notify the Department if the facility no longer required coverage for some other reason, such as if it was covered under an individual permit. According to the Department, it received six applications for general permit coverage in response to the letters. Additionally, it reported that department staff spent a substantial amount of time verifying information from other entities that indicated they no longer required coverage and conducting research in an attempt to determine if nonresponsive entities still existed and/or required permit coverage.</p> <p>According to the Department, based on what it believes to be the poor results of the pilot procedure, it does not plan to send similar letters to any of the remaining facilities with permit coverage that had expired since fiscal year 2006.</p>

## Recommendation

## Status/Additional Explanation

- c. Develop a process for addressing facilities that do not renew on time in the future.

### Implementation in process

The Department reported that before it begins developing a process for addressing facilities that do not renew on time, it first wants to modify the administrative rules governing APP general permits to try and reduce the number of facilities that do not renew on time in the future. Specifically, the Department reported that, because there is no requirement for the Department and a permittee to remain in contact over the 5-year APP general permit coverage period, when facilities close or are sold to another entity, the Department's contact information becomes obsolete. As a result, according to the Department, it may not be able to notify the facility that its permit coverage is coming due or has expired, nor can it effectively determine whether or not the facility is still in operation or if it requires permit coverage without conducting a site visit. The Department reported that it may seek an exemption from the Governor's rule-making moratorium allowing it to revise the administrative rules governing APP general permits to require more frequent contact between the Department and the permittee during the 5-year general permit coverage period. According to the Department, in the summer of 2016 it will assess its rule-making priorities and decide whether or not to seek such an exemption in fiscal year 2017.

2. The Department should develop written policies and procedures for reviewing air quality general permit applications and continue with efforts to test the feasibility of e-permitting for air quality general permits and, if these e-permitting tests prove successful, use e-permitting for all of its air quality general permits and develop policies, procedures, or other guidance documents for manager review of e-permitting decisions and periodic audits of the e-permitting system.

### Implementation in process

As of May 2016, the Department had developed and implemented standard operating procedures for staff to use when reviewing applications for air quality general permit coverage. In addition, the Department continued to make progress toward implementing an automated, online application review process for its air quality general permits and estimated that it will complete implementation of the online application review processes for three air quality general permits by the end of fiscal year 2016. Once the online general permit application processes for these three permits is complete, the Department reported that it will use the design of these processes as a model for moving other air quality general permits to its automated, online e-permitting system and will prioritize the transition of the permits based on criteria including customer demand and ease of automation.

**Recommendation****Status/Additional Explanation**

3. Similar to the risk-based inspection approach recommended in the Office of the Auditor General's March 2013 report (see Report No. 13-01), the Department should assess the risks posed by small on-site wastewater systems against the risks posed by the other facilities it regulates and inspects in order to prioritize inspections of on-site wastewater systems and identify which applicants should be inspected prior to approving operation. This approach should be implemented by both its main and Southern Regional Offices.

**Implementation in process**

In February 2016, the Department developed a standard operating procedure for assessing the risk of small on-site wastewater systems to prioritize them for inspections and a standard checklist for conducting inspections of these systems. As of April 2016, the Department reported it had received four permit applications for small on-site wastewater systems since developing the new procedure and checklist. However, it reported that it has yet to begin using the risk assessment procedure to prioritize inspections of on-site wastewater systems because it planned to inspect all four facilities to train department staff to use the inspection checklist.

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**Sunset factor #4 The extent to which rules adopted by the Department are consistent with the legislative mandate**

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4. The Department should complete the rule-making process for the rules required by A.R.S. §49-761 once the Governor's rule-making moratorium expires.

**Not yet applicable**

The Governor's rule-making moratorium has not expired nor has the Department sought an exemption to the moratorium. However, the Department reported that it may seek an exemption from the Governor's rule-making moratorium, allowing it to complete rulemaking as A.R.S. §49-761 requires. According to the Department, in the summer of 2016 it will assess its rule-making priorities and decide whether or not to seek an exemption in fiscal year 2017 to complete this rulemaking.

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**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.**

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5. To fully comply with A.R.S. §41-1091.01, the Department should post on its Web site the full text of each substantive policy statement currently in use and the required notice that the substantive policy statement is advisory only.

**Implemented at 30 months**

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