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Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens
Director

August 16, 2004

Debra K. Davenport, CPA
Auditor General
2810 North 44th Street, Suite 410
Phoenix, AZ 85018

Re: Performance Audit and Sunset Review—Water Quality Division

Dear Ms. Davenport:

The Arizona Department of Environmental Quality appreciates the opportunity to respond to the Water Quality Division (the Division) performance audit report. The report is a useful assessment of the Division's efforts to monitor drinking water quality and to process Aquifer Protection Permits. We thank the Office of the Auditor General for its effective communication throughout the audit process.

As you know, the revenue and budget reductions of the past few years have presented a challenge to state agencies. ADEQ has lost staff but faced an increased work load to assess and increase security and to address new federal regulations. Despite these challenges, the Water Quality Division, indeed the entire Department, always achieved its mission "to protect and enhance public health and the environment by ensuring safe drinking water and reducing the impact of pollutants discharged to surface and groundwater." We are proud of our accomplishments.

As the audit indicates, ADEQ has exceeded its obligation to issue Aquifer Protection Permits to non-mining facilities in Arizona. The Legislature, in 1999, created a statutory deadline of January 1, 2004 for this Department to complete the necessary permitting for existing non-mining facilities under the Aquifer Protection Permit program. ADEQ addressed permitting requirements for the then 255 existing, unpermitted, non-mining facilities, in addition to the more than 100 applications for new facilities the Department receives every year. It was an extraordinary challenge, but Water Quality Division staff and others within the Department worked together to meet this requirement in advance of the deadline. Additionally, the audit indicates that ADEQ is on track to meet its obligation to issue Aquifer Protection Permits to mining facilities before January 1, 2006. As a result, APP permit applicants no longer will wait behind a backlog of permit applications, and our groundwater is better protected.

The audit concludes that the Division should take steps to appropriately recover its costs of issuing Aquifer Protection Permits. ADEQ began this process in 2004. At the request of the

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Department, the Forty-sixth Legislature increased the maximum fee cap for processing an APP application. H.B. 2190, signed by the Governor May 19, 2004 and effective immediately upon her signature, increased the maximum fee to \$100,000, eliminating any of the prior formula-driven maximum fees and making the \$100,000 maximum fee retroactive for all permits in process. This change in the maximum fee, and a facility's ability to waive the fee should it desire to do so, will allow the Division to capture all of its billable costs associated with issuing APPs.

Other Water Quality Division efforts also deserve recognition. Much has been written about the new, more stringent, federal standard for arsenic in drinking water and the difficulties Arizona water supplies may have meeting that standard. Arsenic occurs naturally in many parts of our state, and some of the most affected communities are those least able to afford the costs of treatment. Knowing this, the Water Quality Division—and this Department—took the initiative to construct Arizona's Arsenic Master Plan—a guide for small water systems for identifying the most effective and least costly method to ensure compliance with the new drinking water standard. The Arsenic Master Plan assists the Arizona Corporation Commission in its efforts to approve appropriate rates for private water systems; it enables community leaders to understand the decision process that must occur before a treatment technology is selected; and it helps small water systems find the right sources of funding and technical expertise.

Also, in late 2002, ADEQ received federal approval to manage the federal Clean Water Act permitting program as a state program. In the eighteen months since the Department has managed this program, we have created 3 general permits designed to make it easier for business, agriculture and local governments to comply with surface water quality requirements. Additionally, the Department is implementing more customer-focused "e-government" initiatives, with the advent of the "SMART NOI" application, allowing those subject to the construction storm water permit to file their Notice of Intent to discharge online.

The Water Quality Division is focused on making Arizona's waters clean and safe, for drinking, recreating, and for fish and wildlife, and for protecting Arizona's groundwater for drinking water purposes. Much has been accomplished and more remains to be done. It is in that spirit that we receive the audit of the Auditor General and provide the following response.

FINDING 1: DIVISION COULD IMPROVE ITS OVERSIGHT OF DRINKING WATER QUALITY MONITORING.

Compliance with environmental regulations is a priority for this administration and the Division has undertaken many improvements to its enforcement process, in addition to issuing nitrate reminder letters, which are an effective enforcement tool as noted in the performance audit. To allow more rapid problem identification and response, as of November 2003 the Division uses automatically-generated letters to notify facilities of any failure to meet monitoring and reporting requirements, which require a response within 10 days. If the facility fails to respond within 10 days, the Division sends an automatically-generated Notice of Violation for Failure to Monitor and Report, which requires a response within 15 days. If the facility does not respond to the NOV, the Division issues a Compliance Order with a mandatory penalty. This compliance strategy has resulted in 82 Compliance Orders, Consent Orders, and NOVs issued as of June 30,

2004. Many other water systems returned to compliance without the need for escalated enforcement. Significantly, the FY 2004 4th quarter SNC report indicates the number of water systems in “significant noncompliance” has dropped by approximately 40 percent. ADEQ also has increased its focus on compliance assistance to ensure that those who want to comply with environmental regulations, but struggle, receive the assistance they need. On the other hand, we have made clear that we will take aggressive action against those who do not take compliance with Arizona’s environmental regulations seriously. Indeed, ADEQ has issued orders or settled a lawsuit in several significant cases since January 2003.

Although the audit suggests additional output performance measures, it is important to note that the Water Quality Division’s Compliance Section has three outcome performance measurements: (1) a 95% compliance with health based drinking water standards by 2005; (2) a 90% compliance rate for major dischargers in targeted watersheds (the watersheds rotate every year); and (3) by 2005, a 90% compliance rate for meeting drinking water MCLs, surface water quality standards, and aquifer water quality standards. ADEQ will be pleased to consider whether additional measures are needed.

RECOMMENDATIONS

1. The Division should research the costs and benefits of expanding its Monitoring Assistance Program to help small water systems carry out all of their testing requirements to come into compliance, thereby reducing the Division’s compliance and enforcement workload.

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

2. After the Division decided whether to expand the Monitoring Assistance Program, and any changes have taken effect, the Division should review its Drinking Water enforcement workload and staff levels to determine whether additional staff are needed.

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

FINDING 2: DIVISION SHOULD CHARGE FEES FOR DRINKING WATER ENGINEERING REVIEWS.

RECOMMENDATIONS

1. To comply with A.R.S. §49-353 and lessen reliance on the State General Fund, the Division should establish by administrative rule fees for performing drinking water engineering reviews.

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

2. To establish the fees, the Division should begin tracking the hours it spends reviewing applications and, in doing so, should consider the forms and processes already used by other department engineering review functions.

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

FINDING 3: DIVISION HAS MADE SIGNIFICANT PROGRESS IN PROCESSING APP APPLICATIONS.

This finding presents information only. Therefore, no recommendations are presented.

The Department would like to clarify that currently 48 general permits are available under the APP Program. **More importantly, the Department thanks the Auditor General for recognizing the Division's significant achievement of eliminating the backlog of non-mining Aquifer Protection Permit applications.**

FINDING 4: DIVISION SHOULD RECALCULATE APP PROCESSING FEES.

The audit notes that the Division based its recoverable costs for processing APP permits in part on the General Fund moneys appropriated by the Legislature for that purpose. When the Division calculated the current APP processing fees in 2001, it used a method based upon assigning to its General Fund sources appropriated by the Legislature and allocated within the Department the indirect, or non-billable, costs related to the water protection services defined in rule. This method was a reasonable approach that was responsive to concerns of stakeholders and embodies the compromise struck by the Legislature. While this method complies with the legislative directive to charge no fee for indirect, or non-billable, costs, we recognize that the current fees may not capture all the direct, billable and indirect, non-billable costs of APP processing activities.

RECOMMENDATIONS

1. The Division should regularly recalculate its APP processing fees based on:
 - a. Actual direct costs rather than on general fund contributions; and
 - b. Up-to-date estimates of direct costs and billable hours

The finding of the Auditor General is agreed to and the audit recommendations will be implemented.

2. In light of generally accepted definitions of direct costs, the Division should charge for time traveling to permit sites.

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

Ms. Davenport
August 16, 2004

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Thank you for the opportunity to respond to the performance audit and Sunset review for the Water Quality Division.

Sincerely,

Stephen A. Owens
Director