



Janet Napolitano  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stephen A. Owens  
Director

August 26, 2004

Debra K. Davenport, C.P.A.  
Auditor General  
2810 North 44<sup>th</sup> Street, Suite 410  
Phoenix, AZ 85018

Re: Performance audit and Sunset review – Waste Programs Division

Dear Ms. Davenport:

On behalf of the Arizona Department of Environmental Quality, we appreciate the opportunity to respond to the Waste Programs Division performance audit report. The report is a useful assessment of the Division's enforcement time frames and the Underground Storage Tank State Assurance Fund. We thank the Office of the Auditor General for its effective communication throughout the audit process.

As the audit reflects, the Waste Programs Division's mission is to "protect and enhance public health and the environment by reducing the risk associated with waste management, regulated substances and contaminated sites." The Division achieves this mission with hazardous waste facility inspections, landfill approvals, site investigations, clean up orders and recycling fund grants administered by the Division, to name only a few of the Division's responsibilities. Despite revenue and budget reductions in the past few years, ADEQ has seen improvements in quality and performance, including the Hazardous Waste Program, Underground Storage Tank Program and the State Assurance Fund, which are the focus of your audit.

As the audit noted, children's health is a goal of the Waste Programs Division and the Department as a whole. This goal is a direct result of the Governor's leadership to protect Arizona's most valuable resource--our children. The Division has taken significant steps to improve the environment for children. For example, ADEQ's pollution prevention program, within the Waste Programs Division, recently received a grant from the U.S. Environmental Protection Agency to educate and encourage school districts to construct or retrofit schools to be more environmentally friendly. This "Green Schools" initiative will develop design, construction and operational practices that will reduce children's exposure to potentially harmful chemicals typically found in school settings.

Additionally, the Division surveyed Arizona schools on the use of chromated copper arsenic wood-coated playground equipment to assess children's potential exposure to this substance. Finally, when TCE-contaminated water was being used for irrigation in a north Arizona

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elementary school, the Division quickly stepped in and conducted sampling of drinking water wells to ensure that children were being protected. The Division is conducting further investigation of the cause of contamination in the irrigation water and options for correcting the problem.

**FINDING 1: CHANGES HAVE BEEN MADE TO THE STATE ASSURANCE FUND, AND THE DEPARTMENT SHOULD TAKE ADDITIONAL ACTIONS**

The audit addressed the Underground Storage Tank Program and the State Assurance Fund (SAF). As the audit noted, the Legislature has enacted numerous significant changes to the Department's administration of the SAF, including an eligibility deadline of 2006 and claims deadline of 2010. To better enable the Department to implement the new legislation and to improve efficiencies throughout the UST and SAF programs, these programs have been consolidated into a new Tank Programs Division. The new Division consists of the SAF Program, which was moved from the Administrative Services Division, and the UST Corrective Action Section and UST Program Support Section, which were moved from the Waste Programs Division. The new Division will focus on implementing the new legislation, cleaning up leaking UST sites, increasing outreach efforts across the state, increasing inspections and compliance, streamlining SAF, and continuing other program efforts. The creation of the new Division will allow the Department to effectively implement the statutory changes and the audit recommendations.

As the audit recognizes, the Department also has made substantial administrative improvements to the SAF. By January 2003, the Department faced a backlog of over 1,100 unpaid SAF applications by SAF claimants. In early 2003, an internal working group was established by the Department to determine the reasons for this enormous backlog. In May 2003, the Department made key administrative changes to the SAF, and, as the audit recognizes, since that time, the Department has eliminated this backlog completely. SAF applicants no longer must wait years for payment. The SAF is operating on a cash basis and, as applications are processed and approved, they are paid. The Department thanks the Auditor General for noting this dramatic improvement to SAF claims processing in the audit.

Further, the audit recognizes the significant progress the UST program has made since October 2003 in enforcing the federal and state regulations concerning financial responsibility (FR) requirements for owners and operators of underground storage tanks. The Department has recognized the importance of enforcing FR requirements and initiated an aggressive program of informing the regulated public about FR requirements in June 2003. The Department sent post cards to all owners and operators of underground storage tanks describing the FR requirements. In October 2003, the UST program transmitted FR site status letters to more than 450 UST owners that were identified as not having FR. This effort resulted in an increase in the FR compliance rate from 52 percent of UST facilities in October 2003 to 62 percent in January 2004. To further increase the FR compliance rate, the department began conducting operational compliance inspections at facilities out of compliance with FR requirements. This effort is the prelude to more formal enforcement measures, including the issuance of orders and the assessment of penalties, if required.

In addition to the Department's increased effort to ensure compliance with the financial responsibility requirements, from July 1, 2003, to July 31, 2004, the UST program dramatically improved its UST facility inspection cycle times from greater than 9 years to approximately once every 4 years. During this time period, 618 facilities were inspected for operational compliance which resulted in the issuance of 47 Notice of Violations for significant operational violations. The program is in the process of hiring additional inspectors to reduce the inspection cycle to every 3 years.

The audit recommendations address continued enforcement of the UST financial responsibility requirements and an evaluation of the reasonableness of the SAF cost ceilings. The Department agrees with the auditor's assessment that compliance with financial responsibility requirements is a high priority as the SAF comes to an end. Similarly, to reduce the burden on the SAF and thereby help ensure all valid claims are paid and the new Regulated Substance Fund is fully funded, the Department will reassess the existing cost ceilings. Please be assured that the new Tank Programs Division will implement these recommendations in addition to other steps necessary to make SAF a more efficient and effective public fund.

### **RECOMMENDATIONS**

1. The Department should continue to work on increasing compliance with financial assurance requirements, including pursuing formal enforcement actions, such as consent orders and compliance orders, as necessary.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**
2. The Department should assess the cleanup costs charged to the State Assurance Fund to see if cost ceilings are being treated as the actual price of cleanup costs rather than as an upper limit for costs.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**
3. If contractors are routinely charging at the cost ceilings for certain cleanup activities, the Department should consider revising cost ceilings to better reflect the true cost of cleanup work.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**
4. If the Department performs a cost survey to create the cost ceilings that will be effective in July 2005, it should use an appropriate methodology and not allow respondents to answer questions that do not pertain to their occupation.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**

5. The Department should examine the feasibility of instituting competitive bidding as a method of controlling State Assurance Fund costs.

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

## **FINDING 2: THE DIVISION SHOULD IMPROVE ITS HAZARDOUS WASTE ENFORCEMENT EFFORTS**

The audit of the hazardous waste enforcement program focused very specifically on the timeliness of enforcement actions. ADEQ recognizes the importance of swift enforcement, and the Division will explore and implement ways to speed up, streamline, and escalate as appropriate its enforcement actions in accordance with the recommendations in the audit. However, the audit's focus on a single aspect of the hazardous waste enforcement program gives an incomplete picture of the total effectiveness and accomplishments of our hazardous waste enforcement efforts.

First and foremost, the Department's hazardous waste inspection program ensures that any imminent and substantial risk discovered at an inspection is addressed during or immediately in response to the inspection. This is accomplished by providing the facility with immediate written and oral instructions on major violations at the time of the inspection through an exit debriefing interview and written instructions. The exit debriefing frequently requires the facility to provide documentation to ADEQ that major violations are addressed within 10 days. Although Arizona law requires only the inspection report to be issued within 45 days after the inspection, ADEQ has adopted a policy requiring that the initial enforcement action also be issued within this same time frame. Even though ADEQ's inspection report and enforcement action may in some cases be issued up to 90 days after the inspection, ADEQ's use of the exit debriefing has ensured that any actual imminent risk to human health or the environment is corrected in a timely manner.

Overall, the hazardous waste enforcement program is very effective in discovering violations, returning violators to compliance, and imposing appropriate penalties to serve as a deterrent. For example, the audit includes a summary table, which demonstrates clearly that the number of informal enforcement actions--Notices of Opportunity to Correct (NOCs) and Notices of Violation (NOVs)--have generally increased over the last four years, and during fiscal year 2004 the program initiated 96 informal actions (36 NOCs and 60 NOVs), compared to 56, 73, and 30 in fiscal years 2003, 2002, and 2001, respectively. This far exceeds the number of actions taken in any fiscal year since the year 2000, and is a 71% increase compared to the 56 that were issued in fiscal year 2003. This data is indicative of a program that is active, mature and appropriately enforcing Arizona's hazardous waste laws.

ADEQ's policy generally provides that facilities get the opportunity to address violations in the context of an informal enforcement action, the Department must pursue penalties when a facility has either received an economic advantage by operating out of compliance or they have significantly violated the law threatening human health and the environment. The hazardous waste program has demonstrated a record of taking aggressive, yet appropriate, penalty actions

for the state. In 2001, ADEQ and EPA settled the largest hazardous waste case in the United States for over \$22 million. Since that time, ADEQ has consistently taken penalty actions that are appropriate given the potential contamination that could occur as a result of mismanagement of hazardous waste. In the last two years, the Department has concluded 9 penalty cases resulting in facilities paying more than \$600,000 to the state's General Fund and more than \$100,000 in supplemental environmental projects (SEP). See Table 1.

Table 1. 2002-2004 Hazardous Waste Enforcement Penalty Cases

Aviation Management Services	\$30,000
W.L. Gore & Associates	\$90,000
Phoenix Heat Treating, Inc.	\$50,000
Arizona Public Service	\$200,000
Dome Rock Industries, Inc.	\$100,000
Sunbelt Tank	\$7,000
Thermofluids	\$22,250
Superior Special Services	\$143,000, plus \$125,000 SEP
Mesa Oil	\$7,500, plus \$1,000 SEP

In addition to penalty cases, ADEQ's hazardous waste program also has taken administrative actions that directly protect the citizens of Arizona. On February 26, 2003 the Department issued orders against and revoked the license of Innovative Waste Utilization, LLC, in Phoenix. On March 7, 2003, ADEQ initiated an emergency response action to remove approximately 1,000 barrels of hazardous waste from the facility after a number of the barrels were found to present an imminent and substantial endangerment to the community during an inspection earlier in that day. These and other enforcement actions demonstrate the Department's increased efforts to protect and enhance public health and the environment, and we are committed to do more.

The audit report states that facilities often do not return to compliance within the short time frames required by the hazardous waste program. ADEQ operates with the goal of minimizing potential impacts to human health and the environment, and therefore, returning facilities to compliance within the shortest possible time. To that end, the hazardous waste enforcement program uses aggressive time frames for achieving compliance. As the report states, these time frames are often far less than the 120 days initially allowed by the Department's policy. If a facility makes progress on accomplishing all of the required actions, ADEQ has the authority to extend the time frame an additional 60 days. Although the data you have presented in the audit report suggest that facilities are not returning to compliance within an acceptable time frame, a further review of the data shows that the program is, in fact, responsibly taking actions to return facilities to compliance. ADEQ records show that 96% of all facilities receiving informal enforcement actions during fiscal year 2004 were either returned to compliance or escalated for further enforcement within the 180 total days allowed by ADEQ policy.

## **RECOMMENDATIONS**

1. To more quickly notify responsible parties about violations identified during inspections, the Division should explore ways to streamline its review and approval process for enforcement actions.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**
2. The Division should consider setting in policy specific timeframes for each step in the enforcement action review and approval process.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**
3. The Division should escalate both informal and formal enforcement actions to the next level as necessary against responsible parties that have not corrected their violations.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**
4. The Division should modify its computer system to allow for the generation of management reports to track the status of enforcement actions.  
**The finding of the Auditor General is agreed to and the audit recommendation will be implemented.**

Thank you for the opportunity to respond to the performance audit and Sunset review for the Waste Programs Division.

Sincerely,

Stephen A. Owens  
Director