



State of Arizona Office of the Auditor General

PERFORMANCE AUDIT

**EMERGENCY
RESPONSE
COMMISSION
AND
DEPARTMENT OF
EMERGENCY AND
MILITARY AFFAIRS**

**Report to the Arizona Legislature
By Douglas R. Norton
Auditor General
September 1997
Report # 97-14**



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September 29, 1997

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Major General Glen W. Van Dyke, Director
Department of Emergency and Military Affairs

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Emergency Response Commission. This report is in response to a May 29, 1995, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957. This report also includes a follow-up to the 1994 performance audit of the Department of Emergency and Military Affairs, which was also conducted pursuant to Laws 1995, Ch. 240, §25.

The report addresses the Emergency Response Commission's overall effectiveness in ensuring the State's compliance with the federal Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA requires companies that use, manufacture, or store specified amounts of hazardous materials to report chemical information to state and local authorities. Arizona's Commission can do more to improve compliance with EPCRA requirements by adopting better methods to identify facilities required to report chemical information. In addition, the Commission should pursue statutory authority to assess late penalties against facilities that continually fail to comply with EPCRA reporting requirements. Finally, the Commission needs to develop an adequate data management process to ensure that the public has access to accurate, complete information.

Regarding the follow-up to the 1994 performance audit of the Department of Emergency and Military Affairs, improvements were noted in the Department's oversight of federal and state monies and the level of control exercised by the Adjutant General over the Division of Emergency Management. However, the Department has not sufficiently improved its disaster response preparedness, and liability concerns regarding its agreements to store military hardware for the National Guard Bureau still need to be resolved.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on September 30, 1997.

Sincerely,

Douglas R. Norton
Auditor General

Enclosure

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Emergency Response Commission pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 42-2957. In addition, this report contains a follow-up to the 1994 performance audit of the Department of Emergency and Military Affairs pursuant to Laws 1995, Ch. 240, §25.

Emergency Response Commission

The Legislature created the Emergency Response Commission (Commission) in 1988 to implement the federal Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA requires facilities that use or store specified amounts of hazardous materials to report chemical information to state and local authorities. The Commission is responsible for compiling this information and making it available to the public and government so they can use it to be aware of the potential for chemical emergencies. The Commission also helps local emergency planning committees to implement EPCRA at the local level.

Commission Needs to Enhance Arizona's EPCRA Compliance (See pages 5 through 11)

The Commission should do more to improve compliance with the federal Emergency Planning and Community Right-to-Know Act. A primary element in successfully implementing EPCRA is knowing which facilities should be reporting chemical information. However, the Commission estimates that 30 percent of these facilities statewide currently do not report to state and local authorities. Noncompliance may be even higher in some areas of the State, according to the local emergency planning committees. In fact, some local emergency planning committees estimate that as many as 60 to 90 percent of the facilities in their county that are subject to EPCRA requirements are not submitting important chemical information. Failure to report such information can result in the public's lack of knowledge about potential chemical hazards in their communities as well as a lack of responder preparedness when hazardous material emergencies occur. Such an incident occurred in 1995, when

firefighters were injured at a facility that had not reported chemical information for the four previous years. Because the firefighters did not know there were hazardous chemicals stored at the facility, they were unable to respond appropriately.

To better ensure that people are aware of potential chemical threats in their community, the Commission needs to adopt better facility identification methods geared toward identifying facilities that are not in compliance. Furthermore, the Commission should seek statutory authority to impose penalties against facilities that have been identified and fail to comply with reporting requirements.

Commission Needs to Improve Public Access to Critical Chemical Information (See pages 13 through 16)

As more facilities comply with EPCRA reporting requirements, the Commission needs to develop an adequate data management process to ensure the public has access to accurate and complete chemical information. Annually, approximately 4,000 facilities across the State provide EPCRA information, with most facilities reporting on two or more types of chemicals, including the chemicals' names, amounts, and manner of storage. While this is a significant amount of potentially valuable data, Commission staff estimate that approximately 20 percent of the information received from facilities is problematic in some way. In addition, data entry problems, such as miscoding and incorrect data entry, further limit accuracy and completeness.

To correct such data deficiencies, the Commission needs to take action in several areas. First, to ensure the accuracy and consistency of its database information, the Commission must establish adequate data management procedures, such as regular supervision of data entry and implementation of quality control measures. Second, to ensure the reliability of the facility information it does receive, the Commission should continue training businesses on how to properly comply with EPCRA. Finally, as a long-term solution to managing chemical information, the Commission should study the feasibility of implementing the database funded by the Environmental Protection Agency that two fire departments in the Phoenix metropolitan area are currently piloting.

Department of Emergency and Military Affairs Follow-up

Update on 1994 Performance Audit Recommendations (See pages 23 through 30)

In conjunction with the Sunset review of the Emergency Response Commission, the Auditor General was also required to conduct a follow-up to the 1994 performance audit of the Department of Emergency and Military Affairs (Auditor General Report 94-9) pursuant to Laws 1995, Ch. 240, §25. This review, which assessed the extent to which the Department addressed the findings and recommendations made in 1994, found that the Department has demonstrated improvement to its operations in some areas, with additional work needed in other areas. Specifically, the Department has addressed previous concerns related to the oversight of federal and state monies and the level of control exercised by the Adjutant General over the Division of Emergency Management. Efforts have also been made to restore contaminated sites at Camp Navajo. However, the Department has not sufficiently improved its disaster response preparedness through a revised state emergency plan and statewide training exercises. Furthermore, the Department has not taken adequate steps to address liability concerns regarding its agreements to store military hardware for the National Guard Bureau.

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Emergency Response Commission

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Emergency Response Commission pursuant to a May 29, 1995, resolution of the Joint Legislative Audit Committee. This audit was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2951 through 42-2957.

History of the Emergency Planning and Community Right-to-Know Act (EPCRA)

In 1984, a Union Carbide factory in Bhopal, India, leaked a poisonous chemical, causing more than 1,700 deaths and seriously injuring 4,000 to 5,000 people. The next year, a gasket failed on a 500-gallon storage tank, releasing a cloud of toxic chemicals and injuring 120 people near a Union Carbide plant in West Virginia. In response to these tragedies, the federal government passed the Emergency Planning and Community Right-to-Know Act (EPCRA) in 1986. This law, an expansion of the Superfund Amendments and Reauthorization Act, built upon other federal, state, and local programs aimed at helping communities to better meet their responsibilities in regard to potential chemical emergencies. Specifically, EPCRA's chemical reporting requirements help increase the public's knowledge and access to information about the presence of hazardous chemicals in their communities so that citizens and the response community can better plan for and respond to chemical emergencies when they occur.

Commission Established to Implement EPCRA

EPCRA requires the governor of each state to establish a state emergency response commission to administer the program on a statewide basis. Consequently, in 1988, the Legislature enacted A.R.S. §26-343, creating the Emergency Response Commission and establishing the state Emergency Planning and Community Right-to-Know Act. Arizona's EPCRA law is similar to the federal version and covers four primary areas of chemical reporting and planning:

- 1. Emergency Planning**—To enhance emergency response coordination and planning, EPCRA requires state emergency response commissions to appoint local emergency

planning committees to plan for chemical emergencies at the local level. Each of Arizona's 15 counties has a local committee consisting of representatives from:

- State and local governments (elected)
- Police departments
- Public health agencies
- Transportation departments
- Facilities subject to EPCRA
- Fire departments
- Civil defense groups
- Environmental groups
- Hospitals
- Media
- Community groups

Each local committee is required to develop and annually review an emergency response plan for hazardous materials. The plan should include such items as the location of extremely hazardous substances, a description of community and industry emergency equipment, and methods for notifying the public in the event of a chemical emergency.

2. **Emergency Release Notification**—This provision requires facilities to immediately notify local emergency planning committees, the Department of Environmental Quality, and appropriate emergency responders when extremely hazardous substances are released into the environment.
3. **Community Right-to-Know Requirements**—This section requires facilities to submit information to state and local authorities on the hazardous chemicals they use, manufacture, or store when the amount exceeds EPA-specified quantities. Specific information includes the chemical name, amount of chemical, manner of storage, location of chemical, level of threat the chemical poses (immediate, delayed, fire, etc.) and proper procedures for handling the chemical in the event of a hazardous materials incident.
4. **Toxic Chemical Release Reporting**—This provision requires facilities in certain industrial classifications to report the toxic chemicals they routinely emit into the environment.¹

¹ This requirement applies to facilities that employ 10 or more full-time people or use more than 10,000 pounds of any chemical that appears on the EPA's Toxic Chemical List.

Organization

The Arizona Emergency Response Commission is located within the Department of Emergency and Military Affairs' Division of Emergency Management. Five members comprise the Commission, including the Director of the Division of Emergency Management (who serves as chair) and the directors (or designees) of the state departments of Environmental Quality, Health Services, Public Safety, and Transportation.

In addition, the Legislature created a 12-member advisory committee to provide the Commission with specialized expertise and a broader perspective of the parties EPCRA impacts. Advisory Committee members include representatives from fire departments, the private sector, and various state agencies, such as the Department of Agriculture, the Industrial Commission, and the Radiation Regulatory Agency.

Budget and Staff

While the Commission receives no federal funding to implement EPCRA, the Legislature appropriates monies that are used for miscellaneous operating expenses. In fiscal year 1997, the Commission received \$19,800 for costs associated with postage, books, operating supplies, travel, and equipment. In addition, the Commission received \$47,700 in state-appropriated grant monies to pass through to the local emergency planning committees for staffing and equipment needs.

The Commission receives no direct state appropriations for staff. Instead, the Division of Emergency Management provides approximately 7 FTEs to perform various duties associated with EPCRA implementation. These positions include an Executive Director, who serves as the liaison between the Commission and local committees; two secretarial positions; and two administrative assistants who review plans and provide data management services. The remaining two positions comprise several individuals who devote at least 20 percent of their time to performing various support functions for the Commission. In 1997, the Division dedicated an estimated \$215,000 to the Commission for such personnel services.

Audit Scope and Methodology

This audit focused on the Commission's overall effectiveness in ensuring the State's compliance with EPCRA's Community Right-to-Know chemical reporting requirements. To evaluate the Commission's effectiveness in this area, several methods were used, including:

- Observing the February 1997 Commission meeting and reviewing minutes of previous Commission meetings back to 1990 to determine how well the Commission is fulfilling its purpose;
- Interviewing 4 of the 5 current Commission members and 3 of the 12 advisory committee members, as well as 6 fire department representatives from around the State to obtain their perspective on how well the Commission is fulfilling its mission;
- Surveying emergency coordinators from all 15 Local Emergency Planning Committees to determine the implementation and enforcement activities they perform at the local level; and
- Contacting federal EPCRA authorities and six other states' commissions noted for their progressive implementation of EPCRA.¹

This report presents findings and recommendations in two areas regarding the Commission's need to:

- Increase the State's compliance rate with EPCRA's chemical reporting requirements; and
- Improve management of critical chemical information.

In addition, pursuant to Laws 1995, Ch. 240, §25, the report contains a follow-up to the 1994 performance audit of the Department of Emergency and Military Affairs (Auditor General Report 94-9). Specifically, the Auditor General was directed to assess whether the recommendations developed during the Sunset review of the Department of Emergency and Military Affairs have been implemented, and submit the review with the Arizona Emergency Response Commission report.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Commission, its Executive Director and staff, the Director of the Department of Emergency and Military Affairs and staff, and the local emergency planning committees for their cooperation and assistance throughout the audit.

¹ States contacted include California, Florida, Louisiana, Maine, New Jersey, and Ohio.

FINDING I

COMMISSION NEEDS TO ENHANCE ARIZONA'S EPCRA COMPLIANCE

Arizona's State Emergency Response Commission should do more to improve the State's compliance with the federal Emergency Planning and Community Right-to-Know Act (EPCRA). Despite federal and state requirements, the Commission estimates that, statewide, 30 percent of facilities subject to EPCRA currently do not report chemical information. Such failure to report can hinder responses to chemical emergencies. Inadequate methods for identifying nonreporting facilities and lack of an enforcement structure contribute to the State's poor compliance. The Commission needs to seek more authority to enforce Arizona's EPCRA compliance.

Background

One of EPCRA's primary purposes is to provide the public and the government with information about possible chemical hazards in communities. As such, EPCRA establishes "Community Right-to-Know" reporting requirements mandating all facilities that manufacture, use, or store hazardous materials in amounts specified by the Environmental Protection Agency (EPA) to submit chemical information to state and local authorities. Facilities required to report range from local convenience stores to large computer microchip companies. These facilities use or maintain chemicals over EPA's specified amounts and are considered at risk of being involved in chemical emergencies that could cause public harm. Therefore, they must provide safety data pertaining to the level of threat each chemical poses and specific handling procedures in the event of a hazardous materials incident. As required by EPCRA, facilities must report this information to the state's emergency response commission, the local emergency planning committee, and members of the response community, such as the local fire department. These reporting requirements are particularly important for Arizona because Maricopa County, in recent years, has been cited in the top 2 percent of counties nationwide for its number of reported toxic chemical accidents.¹

¹ Linda K. Phillips, Hillel Gray, National Environmental Law Center, and State Public Interest Research Groups, *Accidents Do Happen: Toxic Chemical Accident Patterns in the United States* (Dec. 1996).

Arizona's Noncompliant Facilities Can Hinder Response Community's Capabilities

State and local officials estimate that a high percentage of facilities do not report important information about hazardous chemicals, ultimately jeopardizing the emergency response community's ability to respond effectively and safely to chemical incidents.

Noncompliance estimates high for some areas—Both state and local officials believe a high number of facilities that should report chemical information under EPCRA currently do not. Exact compliance rates are difficult to obtain, because Arizona relies on the chemical information facilities currently submit to determine who is subject to EPCRA. Consequently, facilities that never report can often go undetected by state and local authorities. While approximately 4,000 facilities currently report chemical information to state authorities, the Commission estimates that up to an additional 1,700 facilities statewide, or 30 percent, are not reporting.¹

Noncompliance may be even higher in some areas of the State, according to an Auditor General survey of each of the 15 local emergency planning committees. Some local committees estimate that as many as 60 to 90 percent of the facilities in their county that are subject to EPCRA requirements are not submitting mandated chemical information.

Failure to report can impact response effectiveness—Noncompliance with EPCRA provisions can result in a lack of responder preparedness when hazardous material emergencies occur. Commission officials, as well as six fire departments contacted around the State, all stressed how important chemical information is to the response community's ability to plan and respond to chemical emergencies. EPCRA requires that regulated facilities submit hazardous chemical information annually to fire departments to increase their awareness of chemical hazards in their community. This information enables fire departments to:

- Obtain the necessary equipment and training specific to the hazards in their district so they are better prepared to respond in the event of a chemical emergency;
- Identify the types of chemicals at a specific facility when a hazardous materials emergency occurs; and

¹ This estimate is based on the Commission's experience with facility personnel attending workshops for the first time as well as recent efforts to identify noncompliant facilities.

- Refer to proper handling procedures for specific chemicals during a hazardous materials emergency.

Some fire departments can obtain similar information through local fire code provisions and frequent inspections. However, others, without a strong fire code or without the personnel to perform frequent inspections, rely on facilities to submit this information to them under the EPCRA reporting requirements. For those fire departments relying on EPCRA, facilities' noncompliance with the chemical reporting requirements can result in a lack of responder preparedness when hazardous material emergencies occur, which can ultimately threaten lives. The following case example illustrates this point:

- *In 1995, a fire broke out at a Phoenix facility that had failed to report its on-site extremely hazardous materials to state and local authorities for the previous four years. As a result, when the fire department arrived, it did not know there were extremely hazardous materials at the facility. Consequently, 40 firefighters had to be scrubbed to decontaminate themselves of the hazardous chemicals. Two were hospitalized, one for acid burns. According to a Phoenix Fire Department official, the firefighters would have responded differently had they known they were dealing with extremely hazardous chemicals.*

Better Facility Identification Methods Needed

In order to prevent similar incidents happening in the future, the Commission needs to adopt better facility identification methods. Specifically, neither the Commission nor local committees perform systematic outreach activities geared toward identifying noncompliant facilities. Therefore, the Commission needs to establish more comprehensive measures to identify those facilities that are not in compliance.

Facility identification methods are ineffective at both the state and local level— Current outreach efforts by the Commission and local committees are not effective in identifying facilities that are not complying with EPCRA reporting requirements. For example, the Commission's efforts are limited to public education campaigns that are often aimed at facilities already aware of EPCRA's reporting requirements. Specifically, in an effort to inform facilities of their EPCRA reporting requirements, the Commission conducts information workshops on how to properly comply with EPCRA; generates mass mailings containing EPCRA information; and advertises chemical reporting requirements through local newspapers or flyers. The Commission does not, however, have a targeted, systematic method for identifying nonreporting facilities. In fact, the Commission does not even track facilities that have previously reported to ensure continued compliance on an annual basis.

Facility outreach activities may be limited in part to the lack of clarity in both the state and federal law regarding whether the Commission or local committees are responsible for this function. While many local emergency planning committees perform some degree of facility identification, the extent of their activities varies. A survey of all 15 local committees revealed that 9 use some proactive outreach methods, such as examining the phone book or zoning lists, to determine the compliance of businesses that are likely subject to EPCRA requirements. Four committees focus more on public education activities, such as mass mailings. Finally, two committees reported performing no facility identification activities at all.

Although facility identification efforts have been limited, the Commission recently acknowledged the need for proactive outreach when it contracted with a private, nonprofit organization to identify and bring into compliance at least 50 potentially nonreporting facilities in Maricopa, Pima, and Pinal Counties. Although the organization located over 50 facilities within a few months and the Commission referred the facility names to the appropriate local committees, to date it is unclear if any of these facilities have come into compliance.

Commission needs to establish more comprehensive identification measures—To improve its ability to identify nonreporting facilities, the Commission needs to establish comprehensive and systematic identification methods. Several states noted for their progressive implementation of EPCRA were contacted to determine how they resolved the common problem of facility identification. The Commission should consider adopting the methods described below:

- **Using chemical supplier lists**—When Florida first began implementing EPCRA, it worked with chemical suppliers on a voluntary basis to obtain the names of facilities that received chemicals over the EPA-specified amount. This list enabled Florida's Emergency Response Commission to identify those facilities subject to EPCRA to determine who was not in compliance.
- **Researching other agency databases**—Several states use other departments' databases to assist them in identifying facilities. For example, Maine uses information from an underground storage database to identify potential facilities that maintain reportable quantities of chemicals. Similarly, the Commission could research which other state agencies could help in identifying facilities. For example, it could use information maintained by the Department of Environmental Quality regarding facilities that generate hazardous waste or use toxic chemicals. In addition, the Commission could research the information available from local fire departments to compare information reported by facilities.

- **Tracking compliant facilities to ensure continued reporting**—At least five of the six states contacted track compliant facilities yearly to ensure annual reports.

Furthermore, to ensure a more systematic approach to identifying noncompliant facilities, the Commission should work in conjunction with the local committees to clarify who is responsible for outreach activities. Once this issue is resolved, the Commission should establish policies and procedures to ensure these activities are effectively implemented.

Greater Regulatory Authority Needed to Effectively Implement EPCRA

In addition to increasing facility identification efforts, the Commission should pursue statutory changes to more effectively implement and enforce EPCRA. Currently, the only enforcement options available to the Commission are through the federal Environmental Protection Agency and citizen lawsuits, with neither being very effective. As a result, the Commission should seek authority to charge late penalties to provide a stronger incentive for all facilities to comply with EPCRA requirements.

Minimal enforcement authority available—While the Commission needs a targeted, proactive outreach program to identify noncompliant facilities, it lacks the enforcement structure to compel resistant facilities to follow the EPCRA requirements once they are identified. Federal law provides the Environmental Protection Agency (EPA) with power to assess civil penalties up to \$25,000 per violation for failure to comply with the Community Right-to-Know reporting requirements. However, because the law does not provide states with similar authority, states must develop their own legislation to enforce EPCRA. Currently, Arizona's statutes do not provide such authority. Therefore, the Commission relies primarily on the EPA to enforce EPCRA in Arizona. However, according to a Region IX EPA official, federal enforcement activities in Arizona have been minimal due to limited resources. In fact, the EPA has never taken enforcement action against any facilities in Arizona.

While the Commission could sue facilities for noncompliance, this option can be costly. For example, if the Commission did not win a case, it may be required to finance the costs of litigation for the facility as well as its own legal costs. Furthermore, it would not be entitled to any monies awarded as a result of winning a case since financial penalties are not codified in Arizona's statutes.

Commission should seek authority to charge penalties for noncompliance—Because neither federal nor state law provides the Commission with enforcement authority, it

should seek statutory changes to effectively enforce EPCRA reporting requirements. Some states have found that assessing financial penalties provides a stronger incentive for facilities to comply. For example, Ohio and Florida charge penalties that increase over time, encouraging facilities not only to report but to report in a timely manner. Maine is considering pursuing the authority to assess financial penalties to strengthen its enforcement program. While facilities in Maine are subject to penalties of \$1,000 per chemical per day for not reporting their chemical information, the state Attorney General must litigate the case in order to assess these penalties. Consequently, unless the state emergency response commission pursues litigation for every noncompliant facility, it has no enforcement authority to uphold the law.

In addition, other states have developed innovative methods to ensure EPCRA compliance by combining facility identification activities with late penalties. These methods include:

- **Surveying facilities and requiring response through penalties**—As a way to identify its regulated population, New Jersey sends facilities classified under specific standard industrial classification codes (i.e., oil and gas extraction, automotive repair services) an annual “inventory survey.” The survey, designed to inform the state about the chemicals maintained at each facility, requires facilities to indicate on the form if they are subject to state chemical reporting requirements. Even those facilities not subject must complete and return the survey to the state, or they may be fined a maximum of \$2,500.
- **Enlisting local committees’ assistance by giving them penalty proceeds**—Local Emergency Planning Committees are often better suited to identify facilities than the state. For example, Ohio implemented its “bounty program,” which delegates outreach responsibilities to the local committees. In return, the committees receive late penalties that businesses must pay for not previously complying. According to a Commission official, local committees were initially resistant to becoming EPCRA enforcers. However, as it became more financially profitable for participating counties, more local committees accepted this responsibility. While the program started with only 15 of its 87 local committees, it now has 63 committees participating in the program.

In addition to enforcement authority, the Commission has expressed interest in pursuing other alternatives to bring facilities into compliance. Rather than using disincentives, the Commission would like to consider incentive-based programs to achieve greater compliance. However, to date, the Commission has not developed any formal proposals for such programs.

Recommendations

1. The Commission should consider adopting systematic facility identification methods to determine which facilities currently do not comply with EPCRA reporting requirements. Such methods could include:
 - a. Using chemical supplier lists;
 - b. Researching other state and local government databases that may contain information on facilities subject to EPCRA; and
 - c. Tracking compliant facilities to ensure continued reporting.
2. The Commission, in conjunction with the local committees, should clarify who is responsible for facility identification and establish policies and procedures to ensure these activities are effectively implemented.
3. The Commission should seek the statutory changes it needs to provide itself with adequate enforcement authority. Specifically, the Commission should request the ability to assess late penalties against facilities that continually fail to report EPCRA information in a timely manner.

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FINDING II

COMMISSION NEEDS TO IMPROVE PUBLIC ACCESS TO CRITICAL CHEMICAL INFORMATION

As more facilities comply with EPCRA reporting requirements, the Commission needs to develop an adequate data management process to ensure the public has access to accurate, complete information. Numerous data deficiencies and discrepancies exist in the information the Commission currently maintains, hindering its effective use by the public and government agencies. Therefore, the Commission needs to establish data entry procedures and other quality control measures to ensure that timely and complete chemical information is available.

Background

The Commission serves as the statewide clearinghouse for EPCRA chemical information. Individuals interested in receiving information on facilities' chemical use can request the information from the Commission or their local planning committee. Members of the responding community can also access this information to increase their emergency preparedness. The Commission's ability to adequately coordinate this information dissemination is crucial to public awareness. According to the current EPA administrator, "Putting information about local pollution into the hands of the public is the single most effective, common-sense tool available for protecting public health and the environment."

Data Deficiencies Hinder Usefulness of Chemical Information to the Public

The Commission cannot ensure the chemical information it compiles is comprehensive, accurate, and timely. As of 1997, over 4,000 facilities across the State provide EPCRA information annually, with most facilities reporting on 2 or more types of chemicals, including the chemicals' names, amounts, and manner of storage and location. While this is a significant amount of potentially valuable information, Commission staff estimate that approximately 20 percent of the data sheets received from facilities are problematic in some way. In addition, data entry problems further limit accuracy and

completeness. As a result, a number of data deficiencies exist within the current database, including:

- **Delays in entering information**—Although facilities are required to submit chemical information by March 1 of each year, it can sometimes take up to four months before this information is entered into the database. This delay can result in information not being available to users, or users receiving outdated information.
- **Incorrect data entry**—Inaccuracies, such as incorrect coding or misclassification of chemical names, are also problematic. For example, the database contains extremely hazardous substances misidentified as “nonextremely hazardous.” In addition, the database contains invalid state or city listings, such as the “city of San Francisco” listed within Pima County.
- **Incomplete information**—Blank data fields or only partial information, such as no address or the address listed as “in file,” can be the result of partially complete facility forms or data entry error. In addition, some data fields contain the wrong type of information (i.e., address field contains the facility’s contact name). Reconciling identified inaccuracies requires a time-consuming search through information stored in boxes.
- **Inconsistent coding**—Lack of consistent coding or terminology leads to confusing or misleading information. For example, the acceptable code for a nonextremely hazardous substance is “nonehs,” yet variations (such as “no ehs” or “non-ehs”) are read differently by the computer.

Problems such as these hinder the public’s ability to gain access to accurate and reliable information with which to make informed decisions about the potentially hazardous situations that may exist within their communities.

Commission Should Develop Adequate Procedures and Quality Control

The Commission needs to take action in several areas to correct information its officials concede is neither accurate nor reliable. First, the Commission should develop effective data management practices to address data deficiencies. In addition, the Commission should continue its facility training efforts to ensure the completeness of information received from facilities. Finally, the Commission should study the feasibility of

implementing a newly developed automation program designed to improve data management.

Establish adequate data management practices—The Commission must establish data management procedures to ensure the accuracy and consistency of its database information. The Commission's current lack of guidelines for its staff provides the potential for inaccurate information being input into the database. Several personnel changes among staff assigned to data entry tasks further compound the problem, since management has not provided adequate training or supervisory review. Therefore, the Commission should establish guidelines for proper data entry that also allow for adequate supervisory review.

The procedures should also contain quality control measures to ensure the information entered into the database is consistent and comprehensive. Each of the three information recipients (the Commission, local planning committees, and fire departments) maintains its own database. However, the Commission does not routinely cross-reference the information it receives with the information received by the local planning committees and/or fire departments. Therefore, it is quite possible that each of the three groups has varying degrees of information on any particular reporting facility. Thus, the Commission should periodically monitor the quality of information maintained in the database by comparing its own database with other data sources.

In lieu of entering and reviewing chemical information at both the local and Commission level, the Commission may want to consider performing data entry only at the state level. Some states have centralized the data management process at the commission level. For example, Pennsylvania's emergency response commission collects all chemical reporting information, assembles it into a statewide database, then sends the updated information twice a year to the local planning committees. This approach is beneficial in that it reduces duplicative work and eliminates the potential for inconsistent information being maintained by the different organizations that receive and use it.

Continue with facility training efforts—As an added measure to improve information quality, the Commission should continue with its efforts to educate facility employees about EPCRA and its reporting requirements. Currently, the Commission keeps industries informed of their chemical reporting responsibilities through annual workshops. These workshops, conducted with EPA representatives, provide instruction on proper methods of completing EPCRA forms as well as providing industry representatives an opportunity to discuss EPCRA requirements with both federal and state officials. Consequently, these facility training efforts can improve the quality of information that the Commission compiles.

Study the feasibility of developing an automation program—Finally, as a long-term solution to data management problems, the Commission should study the feasibility of implementing an experimental automated system designed to link together various state and federal agencies that use chemical data. Currently, two fire departments in the Phoenix metropolitan area are participating in an EPA-funded pilot project using an automated system that links EPCRA information, along with other disaster-related information, into one database. When completed, this system will also be available to the public and facilities through local libraries. Although the project is expected to be completed in September 1997, it is uncertain when broader implementation will be available. Therefore, in the meantime, the Commission should take the steps described above to ensure the information currently made available to the public is as accurate and timely as possible.

Recommendations

1. The Commission needs to develop and implement effective data management practices to help ensure the accuracy and reliability of its database information by:
 - a. Establishing data entry procedures that require regular supervision of data entry activities;
 - b. Performing quality control measures, including comparing its data with other data sources; and
 - c. Considering centralizing data entry at the state level.
2. To help ensure the accuracy and completeness of the facility information it does receive, the Commission should continue its facility training efforts.
3. To assess long-term data management capabilities, the Commission should study the feasibility of implementing the database that two Phoenix area fire departments are currently piloting.

SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Emergency Response Commission (Commission) should be continued or terminated.

1. The objective and purpose in establishing the Commission.

The Legislature established the Arizona Emergency Response Commission in 1988 to “supervise, coordinate and assist local emergency planning committees for purposes of the Emergency Planning and Community Right-to-Know Act of 1986” (EPCRA). EPCRA is a federal mandate designed to:

- Enhance state and local governments’ coordination and planning for emergency response and preparedness;
- Require facilities to submit information to state and local authorities on the hazardous chemicals they use, manufacture, or store;
- Require facilities to immediately notify the government when extremely hazardous substances are accidentally released into the environment; and
- Require facilities to report on the toxic chemicals routinely emitted into the environment as a part of the manufacturing process.

The Commission’s stated mission is:

“To protect the public and the environment through effective community, industry and government participation in the prevention, preparedness, response and recovery from hazardous materials emergencies.”

2. The effectiveness with which the Commission has met its objective and purpose and the efficiency with which it has operated.

The Commission has generally met its objective by:

- Providing training and guidance to local emergency planning committees, which includes serving as a liaison and resource for EPCRA information;
- Coordinating local and regional responder training, and assisting with needs assessments to determine additional training and resource needs; and
- Conducting annual workshops to educate and train facilities subject to EPCRA on proper methods of completing EPCRA forms.

However, the Commission could further improve its effectiveness and efficiency in two areas. First, the Commission can improve the State's compliance with EPCRA's chemical reporting requirements by developing more comprehensive measures for identifying noncomplying facilities (see Finding I, pages 5 through 11). Second, for the information currently received, the Commission needs to improve its data management practices to ensure the public and government is provided with accurate and complete information as intended by EPCRA (see Finding II, pages 13 through 16).

3. The extent to which the Commission has operated within the public interest.

The Commission's established mission is built on the premise of the community's "right to know" about potentially hazardous chemicals. The Commission has generally operated in the public interest by compiling information that can be useful to the responding community in the event of a chemical emergency. The Commission has also acted in the public interest by establishing procedures to respond timely to public requests for information about possible chemical hazards in their communities.

However, the Commission could do more to operate in the public's interest by focusing more of its efforts on increasing the State's compliance with EPCRA reporting requirements (see Finding I, pages 5 through 11). It could also increase its ability to manage data so that the public is assured it receives complete and accurate information (see Finding II, pages 13 through 16).

4. The extent to which rules promulgated by the Commission are consistent with the legislative mandate.

Per A.R.S. §26-343(I), the Commission has the authority to adopt rules governing its administration of the following activities:

- Procedures for handling public information requests;
- Procedures and implementing programs for chemical emergency planning and preparedness;
- Community right-to-know program reporting requirements; and
- Release reporting requirements.

Despite this statutory authority, the Commission has not adopted any rules or regulations nor does it have plans to do so in the future.

5. The extent to which the Commission 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.

Although the Commission has not promulgated any rules, it does permit public input during its meetings. Additional efforts by the Commission to inform the public include publishing an annual announcement in a statewide newspaper (i.e., the *Arizona Republic*) to advise of the availability and location of EPCRA information. Furthermore, the Commission has placed its newsletter, the *Gatekeeper*, on the Internet, which provides information on Commission activities and available resources.

6. The extent to which the Commission has been able to investigate and resolve complaints that are within its jurisdiction.

This factor does not apply as the Commission has no statutory authority to investigate and resolve complaints.

7. **The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

While the federal EPCRA statute addresses violations and penalties for facilities failing to comply with EPCRA's reporting requirements, the Commission does not have state legislative authority for enforcement actions. As such, this factor is not applicable to the Commission.

8. **The extent to which the Commission has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.**

Though the Commission recognizes it does not have the statutory authority to enforce EPCRA's reporting requirements, it has not sought any legislative changes nor does it view itself as an enforcement agency.

9. **The extent to which changes are necessary in the Commission's laws to adequately comply with the factors listed in the subsection.**

Since the only enforcement actions currently available against facilities that fail to comply with EPCRA requirements are at the federal level by the Environmental Protection Agency (EPA) or through third-party lawsuits, the Commission should seek statutory changes to provide adequate authority for it to enforce EPCRA compliance. Establishing state-level enforcement authority that provides the ability to assess penalties for failure to report chemical information should provide a strong incentive for all facilities to comply with EPCRA requirements (see Finding I, pages 5 through 11).

10. **The extent to which termination of the Commission would significantly harm the public health, safety, or welfare.**

While termination of the Commission would not significantly harm the public's health, safety, or welfare, federal law requires the State to maintain a statewide Commission. In addition, the Commission aids local communities in preparing for chemical emergencies. Therefore, it serves a role by establishing a clearinghouse of information to assist the responding community while providing information to the public that would not otherwise be available.

- 11. The extent to which the level of regulation exercised by the Commission is appropriate and whether less stringent levels of regulation would be appropriate.**

The Commission's regulatory authority is currently established in both state and federal law. While EPCRA requires each state to establish a state emergency response commission and requires facilities to report chemical information to the State Commission, it does not provide states with the necessary enforcement mechanisms to ensure compliance. Therefore, several states have sought their own legislative authority to enforce EPCRA compliance. Similarly, as noted in Sunset Factor 9 (see page 20), the Commission should seek statutory changes authorizing it to also require all facilities handling hazardous chemicals to report as required by EPCRA.

- 12. The extent to which the Commission has used private contractors in the performance of its duties and how the effective use of private contractors could be accomplished.**

The Commission reports that it uses private contractors in the performance of its duties on a limited basis. For example, the Commission uses private contractors as project coordinators and instructors, and to develop computer software for data management. In addition, using EPA grant monies, the Commission recently contracted with a private, nonprofit organization to identify noncompliant facilities in Maricopa, Pima, and Pinal Counties.

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Agency Response

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September 23, 1997

Mr. Douglas R. Norton
Auditor General
2910 North 44th Street Suite 410
Phoenix, AZ 85018

Dear Mr. Norton:

Enclosed is the Department of Emergency and Military Affairs' response to your Sunset Report of the Arizona Emergency Response Commission.

Sincerely,

Thomas R. Deason
Chief Auditor
Department of Emergency and Military Affairs

FINDING I

Recommendation 1. The Commission should consider adapting systematic facility identification methods to determine which facilities currently do not comply with EPCRA reporting requirements. Such methods could include:

- a. Using chemical supplier lists;
- b. Researching other state and local government databases that may contain information on facilities subject to EPCRA; and
- c. Tracking compliant facilities to ensure continued reporting.

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

The Arizona Emergency Response Commission will, in conjunction with appropriate stakeholders, develop a consensus approach to the methods used to adopt systematic facility identification.

Recommendation 2. The Commission, in conjunction with local committees, should clarify who is responsible for facility identification and establish policies and procedures to ensure these activities are effectively implemented.

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

Legislative action will be necessary to clarify responsibilities since local jurisdictions receive no funding for compliance and without a clear mandate, comprehensive participation will be unlikely.

Recommendation 3. The Commission should seek the statutory changes it needs to provide itself with adequate enforcement authority. Specifically, the Commission should request the ability to assess late penalties against facilities that continually fail to report EPCRA information in a timely manner.

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

The Commission and the Division of Emergency Management has never seen itself as an enforcement agency. The Auditor General is correct that there is no current authority for the state to compel facilities with compliance to EPCRA. The Commission has no employees to enforce compliance and neither does the Division of Emergency Management. Although the Commission and the Division would be able to perform any legislated mission that is funded, perhaps there are other agencies that have existing staff and only minimal additional resources would be necessary to perform this mission.

FINDING II

Recommendation 1. The Commission needs to develop and implement effective data management practices to help ensure the accuracy and reliability of its database information by:

- a. Establishing data entry procedures that require regular supervision of data entry activities;

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

The Commission has taken considerable initiative and effort to improve its client service and develop innovative products. The automation of EPCRA information is such an initiative. While the automation project has experienced some development problems, these problems have been resolved through implementing data management and quality control procedures.

- b. Performing quality control measures, including comparing its data with other data sources; and

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

Division of Emergency Management staff will study the feasibility and usefulness of comparing collected data to other databases that exist for other reasons.

The Commission has, upon its own initiative, commenced the reconciliation of LEPC and SERC databases to ensure the completeness and accuracy of EPCRA data reported by facilities.

- c. Considering centralizing data entry at the state level.

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

The Commission has, upon its own initiative, commenced the centralization of data entry into its automated database for 1996 facility reporting. This process will ensure that facility data entry is timely and consistent as the data is subsequently exported to the LEPC's. This recommendation and the previous recommendation will require legislation to ensure that all counties participate. Hardware and Software as well as FTE's to enable the implementation to be successful will be required as well. Making the database available to all departments will involve developing an exporting capability to MAC systems, and some errors in conversion could occur.

Recommendation 2. To help ensure the accuracy and completeness of the facility information it does receive, the Commission should continue its facility training efforts.

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

Recommendation 3. To assess the long-term data management capabilities, the Commission should study the feasibility of implementing the database that two Phoenix area fire departments are currently piloting.

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

The Commission has aggressively participated in fire department initiatives and will incorporate feasible components within its data management activities. While the scope and function of the fire departments and the Commission differ, the partnering of these entities will ensure that the Commission's management of data will be compatible with the needs of emergency responders, LEPC's and the SERC. It is the intent of the Commission to take advantage of these initiatives and combine the accessibility of the Internet to further serve the public.

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**Department of Emergency and
Military Affairs
Follow-up**

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FINDING I

UPDATE ON 1994 PERFORMANCE AUDIT RECOMMENDATIONS

Although the Department of Emergency and Military Affairs has demonstrated some improvement to its operations since its 1994 performance review, additional work is needed. This current review determined that the Department has addressed previous concerns related to the oversight of federal and state monies and the level of control the Adjutant General exercised over the Division of Emergency Management. In addition, efforts have been made to restore contaminated sites at Camp Navajo. However, the Department still needs to take steps to improve disaster response coordination and to help ensure the State's immunity to liability issues surrounding Camp Navajo.

Background

The Auditor General conducted a performance audit and Sunset review of the Department of Emergency and Military Affairs in 1994 (Auditor General Report 94-9). At that time, the Auditor General report identified five areas needing improvement, including the need for:

- The Division of Emergency Management to improve its ability to coordinate disaster response;
- The Department to improve oversight of state and federal monies;
- The Adjutant General to exercise greater control over the Division of Emergency Management;
- The Department to ensure that activities at Camp Navajo are in the best interests of the State; and
- The Department to ensure Camp Navajo's timely environmental restoration.

Following the previous audit, the Legislature enacted legislation requiring a follow-up of the audit's recommendations. Specifically, Laws 1995, Ch. 240, §25, requires the Auditor General to “. . . *conduct a review of the implementation of the auditor general's*

findings regarding the sunset review of the department of emergency and military affairs that was conducted in 1994 and shall submit the review with the Arizona emergency response commission report.”

Improvements in Fund and Department Oversight

The Department has adequately addressed recommendations regarding the need to increase oversight of monies and the Department’s audit function, as well as the need to clarify the Adjutant General’s authority over Division of Emergency Management activities.

Improved oversight of state and federal monies—The Department has taken adequate steps to ensure proper oversight of state and federal monies. In 1994, the Auditor General reported that although the Department established an audit function to perform ongoing expenditure reviews, it maintained inadequate oversight of its audit staff. In fact, there were two separate audit units—one reporting to the Adjutant General and the other conducting audits solely for the Division of Emergency Management. However, the latter audit position received no oversight by the Department’s chief auditor. In addition, deficiencies were noted among both the Department’s and Division’s audit work. Specifically, reviews of liabilities and expenditures for state emergencies were backlogged to 1992; audits to determine compliance with purchase and bidding procedures had never been completed; and audits of disaster relief monies were considered unreliable.

To address these inadequacies, the 1994 report made several recommendations regarding the Department’s audit function. First, the report recommended centralizing the audit function at the Department level to improve audit independence. Second, the report stressed the need for the Department to ensure all necessary audits of state and federal monies are completed and in accordance with government auditing standards. Finally, the report recommended that the Department conduct audits to ensure that the Division used monies appropriately.

Since the 1994 audit report, the Department has improved its audit function. Specifically, the Department centralized its audit function, reassigning all division auditors to report directly to the Chief Auditor, who in turn reports to the Adjutant General. Additionally, the Department developed a master audit schedule to finalize outstanding audits, including terminated emergencies, quarterly reviews, and compliance audits mandated by law. As such, the Department is current with its

mandatory audit responsibilities. Finally, the Chief Auditor developed internal audit policies, standards, and guidelines, and implemented a comprehensive program to monitor subrecipients of federal disaster assistance.

Department has gained greater control over Division of Emergency Management—Since 1994, statutory revisions and operational changes were made to provide for a unified emergency response and proper Department leadership. The 1994 audit found that the Division of Emergency Management had been allowed to largely define the limits of oversight it would accept from the Department director, whose title is the Adjutant General. Attempting to function separately from the Military Affairs division, the Division of Emergency Management opposed consolidation of certain administrative functions, such as accounting, personnel, audit, telephone operations, and its emergency operations center. Additionally, the Division pursued and received a separate budget appropriation. Moreover, certain statutes allowed the Division director to assume control during emergencies. During such emergencies, the statutes authorized the Division director to assume authority over all Department personnel and assets, including the National Guard and the Adjutant General.

To address the need for statutory changes, in 1995, the Legislature amended A.R.S. §§26-302, 26-305(C), and 26-102, to give the Adjutant General, rather than the Division director, the emergency powers of the Governor and control of state resources when authorized. These statutory changes further provide the Adjutant General authority to delegate these powers when deemed necessary. The only statutory change that may continue to cause confusion is A.R.S. §26-303(H). Although the section heading prescribes the “authorization for director of emergency and military affairs,” the statute’s last reference to “director” is not clear to mean the Adjutant General. Ideally, the statute’s terminology should be clarified to avoid future confusion.

In addition to statutory changes, the Department consolidated several of the Division’s functions with similar functions at the Department level, including personnel, audit, procurement, fiscal and property management, and mail distribution services. Further, the Department’s consolidation of computer services is underway, with an anticipated completion date of August 1997. Although some consolidation has occurred, several functions continue to remain separate. For example, though the Division continues to maintain a separate phone system as well as its own emergency operations center, Department officials state the cost to consolidate these services would exceed any potential benefits. Meanwhile, the Department continues to submit a separate budget for the Division of Emergency Management. However, staff for both the Joint Legislative Budget Committee and the Governor’s Office of Strategic Planning and Budgeting permit this practice, stating that the submittal of separate budgets is necessary given the Division’s separate function and funding structure.

Camp Navajo's Environmental Restoration Is Progressing

In addition to addressing administrative and operational oversight, the Department is continuing efforts to restore contaminated sites at the Navajo Army Depot military installation (Camp Navajo). In accordance with federal legislation enacted in 1988, the Department of Defense ordered Camp Navajo's closure and required environmental restoration of the installation. At the time of the audit, an estimated 70 different sites at Camp Navajo were suspected to contain groundwater, surface water, air, or soil pollution. The Department's restoration plan for Camp Navajo involved an agreement between the Department and the U.S. Army, with the money for the majority of contamination sites funded through the Defense Environmental Restoration Account (DERA). A smaller number of contamination sites were funded using Base Realignment and Closure (BRAC) monies.

Since 1994, Camp Navajo officials, along with representatives from the Department of Defense and Arizona's Department of Environmental Quality, identified 78 potentially contaminated sites. Of these 78 sites, 55 sites have subsequently been determined to either be not contaminated or have only traces of contamination that fall below remediation threshold requirements. Efforts to remediate the remaining 23 contaminated sites are progressing at varying stages. As of June 1997, 7 of the contaminated sites have been successfully remediated. Two more sites are planned for remediation, pending fiscal year 1997-98 funding. The remaining 14 sites are undergoing various stages of remedial investigations to determine the nature and extent of contamination before remediation plans can be developed. These remediations are expected to begin between 1998 and 2002.

As of June 1997, the Department has received \$2.7 million in BRAC and \$10.5 million in DERA monies to investigate the level of contamination. According to Department of Defense officials, the Department's pursuit of both BRAC and DERA funds is an appropriate means of remediating Camp Navajo's environmental damage. These same officials stated that Camp Navajo is scheduled to receive an additional \$24.5 million in federal monies to continue the restoration of Camp Navajo. Therefore, the estimated total cost to remediate Camp Navajo is expected to reach approximately \$38 million with an anticipated completion date (excluding any long-term monitoring) of 2008.

Division's Disaster Response Coordination Still Needs Improvement

While the Division of Emergency Management has made some progress toward improving its ability to coordinate disaster response, additional work is needed to correct deficiencies noted in the 1994 report.

1994 report criticizes disaster response preparedness—Although statutorily charged with preparing and coordinating all state government efforts during emergencies, the 1994 performance audit found that the Division lacked a comprehensive state emergency plan, had not ensured its Emergency Operations Center maintained crucial response information, and had not performed enough drills to prepare responders for an actual emergency. Furthermore, the state plan placed into effect in February 1994 was criticized for being ineffective because of its poor organization and for lacking specific information regarding agency response capabilities, standard operating procedures, and mutual aid agreements.

Therefore, several recommendations were made to enhance the Division's disaster response coordination capabilities. First, to address state emergency plan weaknesses, the report recommended that the Division review its plan at least annually and periodically test its quality by performing drills to ensure the capabilities of state agencies and other responders in handling state emergencies and disasters. Along with routine plan reviews, the report recommended that the Division develop standard operating procedures to provide its staff adequate direction when responding to an emergency. In addition, it was recommended that the Division maintain its Emergency Operations Center at all times with the materials necessary for coordinating a disaster response, such as flood maps and phone listings for all possible responders. Finally, to improve responders' preparedness, the report recommended that the Division increase training and statewide response preparedness exercises as well as keep disaster response records, track assigned and completed missions, and formally critique response coordination efforts through after-action reports.

The Division has addressed some of these recommendations. Specifically, to enhance its ability to coordinate and monitor a disaster response, the Division has equipped its Emergency Operations Center with necessary coordination materials, including an automated system capable of tracking response activities. In addition, the Division developed standard operating procedures for each of its four operations sections, and is working to standardize terminology and consolidate the four sets into a single, more integrated manual. These procedures, along with numerous training exercises, have improved the preparedness of Division staff, state agencies, and members of the emergency management community throughout the State.

Additional response coordination needed—Despite the Division’s efforts to address the recommendations made in the 1994 report, additional work is needed. The state emergency plan criticized in the 1994 audit report remains the official plan currently in effect. Although Division staff have participated in a number of training exercises to test the plan’s effectiveness, draft revisions have been underway for over three years and official changes are not expected until January 1998. Therefore, all the inadequacies identified in the 1994 plan continue to exist in its official form. In addition, while the Division has performed a number of varied natural disaster exercises, it has not performed any “statewide” exercises, which were identified as important to learning and practicing techniques for coordinating the resources of federal, state, and local governments. Finally, although the 1994 report noted that conducting formal critiques is important to evaluate the lessons learned and revise training requirements and operating procedures accordingly, the Division has not consistently performed such critiques. For example, the Division is awaiting a review by the Federal Emergency Management Agency (FEMA) regarding the most recent disaster response related to the Palo Verde nuclear plant exercises held in April and May 1997. While FEMA’s review may be useful, it may also be beneficial for the Division to formally critique its own response efforts.

State May Continue to Be Liable for Camp Navajo Activities

The Department has not fully resolved concerns regarding its military storage activities at Camp Navajo. Specifically, while there appears to be improved oversight of monies generated from its storage function, the State’s liability for items stored at Camp Navajo remains a concern.

Use of storage revenues—The 1994 performance audit identified a concern with the Department’s efforts to establish a state-operated enterprise activity at Camp Navajo. Using the extensive storage facilities located at Camp Navajo, the Department contracted through the National Guard Bureau to store over \$1 billion of military hardware, including Minuteman rocket motors, air-launched cruise missiles, and raw rubber. The report noted that although the Department intended to use storage site revenues to support training activities, its storage agreements, which were essentially grants, did not allow monies to be used for this purpose. Therefore, the report recommended the Department modify its agreements with the National Guard Bureau to comply with federal laws and regulations governing the expenditure of grant monies. Further, the report noted that while changes to the agreements might resolve some of these problems, it suggested the need for additional oversight of Camp Navajo’s operations. Therefore, the report recommended the Legislature consider requiring the Department to submit annual operating and capital construction budgets for review.

In response to these concerns, the Department revised its storage operation agreements by modifying terminology to more accurately reflect the nature of the operation. In addition, any accumulated fund balances are used only for capital improvements and maintenance projects. Consequently, National Guard Bureau officials indicate that Camp Navajo's operations are in compliance with federal laws and regulations governing the expenditure of grant monies.

To address the need for adequate oversight, Camp Navajo officials present the annual operating and capital construction budgets to a five-member committee called the General Staff for its review and approval pursuant to A.R.S. §§26-114 and 26-115. The General Staff functions as Camp Navajo's board of directors by providing oversight of Camp Navajo's goals, missions, and day-to-day operations. The Governor then receives and approves the minutes and actions taken by the General Staff. Although General Staff meetings comply with Open Meeting Laws, whereby minutes (along with Camp Navajo's budget) are available upon request, Joint Legislative Budget Committee staff report that the Legislature has not requested Camp Navajo's operating and capital construction budgets for review.

Liability issues still need resolution—Although the Department has taken steps to improve oversight of Camp Navajo's operations, it still needs to address modifications to the storage operation agreements concerning the State's liability. The 1994 audit report noted that the Department's agreements to store military hardware placed significant liability on the State for any damages incurred to those commodities.¹ Despite the Department's efforts to modify its agreements with the National Guard Bureau, agreement modifications fail to adequately address previously identified liability concerns. Although wording changes have been made to the agreements, it still appears that the State of Arizona is responsible for loss or damage to items stored at Camp Navajo, since these agreements do not explicitly state that Arizona would not be liable. Initial conversations with representatives from Arizona's Risk Management and the Attorney General's Office also indicate a concern remains that the agreements may place liability on the State of Arizona for any damages to commodities stored at Camp Navajo. However, Arizona's Risk Management is still reviewing the issue and has not developed a formal statement as to the nature and extent of any liability. Risk Management does acknowledge that the State has not purchased additional property coverage for Camp Navajo.

¹ The current estimated value of the commodities stored at Camp Navajo is \$5 billion. The Department further estimates the value will increase to \$6.5 billion in 1999 with the planned addition of the U.S. Navy's storage of the Trident missile system parts.

Recommendations

1. The Legislature should consider clarifying A.R.S. §26-303(H) to ensure that all references to the “director” specify the director of the Department of Emergency and Military Affairs rather than the director of the Emergency Management Division.
2. To improve its ability to coordinate disaster response, the Division needs to:
 - a. Ensure the timely revision of its state emergency plan;
 - b. Formally critique the response coordination efforts and produce an after-action report that identifies areas needing improvement; and
 - c. Perform statewide training exercises.
3. The Department, in conjunction with Risk Management and federal Department of Defense officials, should take action to relieve the State from liability regarding activities performed at Camp Navajo.

Agency Response

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September 23, 1997

Mr. Douglas R. Norton
Auditor General
2910 North 44th Street Suite 410
Phoenix, AZ 85018

Dear Mr. Norton:

Enclosed is the Department of Emergency and Military Affairs' response to your review of the follow-up of the 1994 performance audit of the Department of Emergency and Military Affairs.

Sincerely,

Thomas R. Deason
Chief Auditor
Department of Emergency and Military Affairs

Recommendation 1. The Legislature should consider clarifying A.R.S. 26-303(H) to ensure that all references to the "director" specify the director of the Department of Emergency and Military Affairs rather than the director of the Emergency Management Division.

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

Recommendation 2. To improve its ability to coordinate disaster response, the Division needs to:

- a. Ensure the timely revision of the state emergency plan
- b. Formally critique the response coordination efforts and produce an after-action report that identifies areas needing improvement, and
- c. Perform statewide training exercises.

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

Implementation of these recommendations began prior to this audit. In November 1996, over 80 state agency and volunteer agency representatives traveled to the Emergency Management Institute in Emmitsburg, Maryland to participate in an "Integrated Emergency Management Class". This class provided participants instruction in emergency response and recovery programs and procedures that could be implemented in the State of Arizona. Following the return to Arizona from this class, this group has continued to meet and refine standard operating procedures and methods. A formal method of revising the state plan was instituted in June 1997 to be completed in January 1998. This is an extensive review and revision of the existing state plan which will implement the Incident Management System, accurately reflect state agency capabilities, and be coordinated with the Federal Response Plan.

A statewide emergency operations exercise will take place in December 1997 to exercise this revised plan. An exercise design team has been formed which will write, produce and critique this exercise. After - action reports will be written that identify areas needing improvement, with target completion dates for the improvements.

Recommendation 3. The Department, in conjunction with Risk Management and federal Department of Defense officials, should take action to relieve the State from liability regarding activities performed at Camp Navajo.

The finding of the Auditor General is not agreed to, but the recommendation will be implemented.

The implementations, however, are unfortunately dependent on Risk Management providing appropriate information to the Department for incorporation into the agreements. This Department has in the past worked with Risk Management on their concern over possible liability to the state of Arizona should damage occur to the commodities stored at Camp Navajo. We will continue to seek a resolution to their concerns. It must be recognized, however, that the disputed liability language is in negotiated agreements between two federal government entities. DEMA has tried for more than a year to get the recommended wording changes for these agreements. Short of this resolution, DEMA also recommended that Risk Management put the federal government on notice, through a simple letter, that the state was not currently insuring itself against any possible liability. That letter, in which DEMA and its assistant Attorney General assisted in drafting, should express an interpretation that the state was not accepting liability for the commodities stored or potential damages.